

THE 1506/346  
Land-Purchaser's  
COMPANION:  
*Mr.* And the *Genl.*  
LAWS

Relating to  
*Tenants and Tenures.*

CONTAINING

- I. The Years Purchase all sorts of Lands, Tenements, Rents, Reversions, &c. are worth; Valuation of Wood, Timber, Tithes, Annuities, &c. with Contracts for Sales.
- II. A Summary of all the Laws and Statutes concerning Purchases of Lands, Tenements, Rents, &c. and the Common Deeds for Conveying and Assigning of the same, Mortgages, &c.
- III. An Abridgement of the Laws relating to all kinds of Tenures; *Tenants* and Occupiers of Estates: Of Leases, Demand and Tender of Rent, Distresses and Replevin, Waste, &c. with Precedents of Grants, Leases, &c. interspersed.

*To which are added,*

The Laws and Statutes relating to Tithes, so far as they concern Tenants: The Law of Ejectments; Rentals of Estates, Accounts of Rents, &c.

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*In the SAVOY:*

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TO THE  
Right HONOURABLE  
**RICHARD,**  
Lord Viscount *Castlemain*.

*My Lord,*

**T**HE following Sheets,  
now offered to your  
Lordship, were chiefly  
compos'd as a Direction in  
the Law to Gentlemen of  
Estates, and Purchasers of  
Manors, Lands and Tene-  
ments. Your Fortune, my  
A 2 Lord,

*The* DEDICATION.

Lord, is equal to the greatest, and by your Lordship's prudent Management, and excellent Oeconomy, the World is convinc'd it cannot be in better Hands: You fully Enjoy the Blessing of doing Good, and you don't enjoy this Blessing only, but make it a Blessing to Others.

To enumerate the many Families, that in a constant Series of Time, have been Reliev'd by your Lordship's Goodness, would be an endless Task. Your Lordship has a greater Pleasure in the Bestowing than others in the Receiving of your extensive Favours: And as this Pleasure is known but to such who have

*The* DEDICATION.

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have Opportunities and Inclinations to do Good; so 'tis your Lordship's good Fortune to Possess it in the highest Degree.

According to *Juvenal*, the ancient Poet, those Persons only are distinguish'd as Noble who are endow'd with the Excellence of Virtue. Your Qualifications, my Lord, and Merit alone have sufficiently recommended you to those Titles which you bear: Generosity, Prudence, Justice, good Nature, publick Spirit, and Love to Mankind, all of them belong to your *Lordship*.

As to what remains, I shall content my self with wishing

A 3

that

*The* DEDICATION.

that your Lordship may Live  
 long; that you may possess  
 Health in as eminent a man-  
 ner as the Riches and Ho-  
 nours of this World; and  
 that you may always have  
 true Peace and Content-  
 ment amidst your great  
 Abundance.

*I am,*

*My Lord,*

*Your Lordship's most*

*Humble and most*

*Obedient Servant.*



# PREFACE.

**I**T is a common and just Observation amongst Persons of the best Sense and Discernment, that when the legal Interest of our National Coin is at any time sinking, the Price and Purchase of Lands at the same time advances; which is very much the Case in the present Conjunction, when there is an uncommon Plenty of Money to

be found, and Persons in general are more than usually fond of Estates in the Country.

With regard to this, and many other Reasons I could mention, I have ventur'd to begin upon the following Treatise; as a Companion to the Purchaser as well in respect of his Contracts for buying, the Valuation, &c. As to let him into some knowledge of our Common and Statute Law on the Subject; and this I could not do with any sort of Propriety, without enumerating and inserting the several Deeds and Instruments made Use of for Conveying and Transferring of Estates from one Person to

## The Preface.

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to another: But herein I have taken such effectual Care to render every thing plain and intelligible, that Persons of all Capacities may be enabled to judge when they are Secure, and faithfully dealt with by the Practisers of the Law, in every thing that shall commonly occur.

And that my small Work may be yet more universally useful, I have added, in a very concise Manner, an account of our various Tenures and Customs for the Enjoyment of Lands; the Laws and Statutes concerning them, and Landlords and Tenants in all Cases; and what is entirely  
New

## The Preface.

New in a Treatise of this Nature, and of general Use, besides Precedents of Leases, Grants, Assignments, Surrenders, &c. regularly interspersed, I have added the *Latus* and Statutes relating to Tithes, so far as they concern Tenants; the Law of Ejectments; and also Rentals of Estates, Accounts of Rents, &c.

N. B. On the late Flourishing Business in Exchange-Alley, occasion'd by the great Rise of the South-Sea Stock, such extraordinary Fortunes have been acquir'd by Merchants and others, that the immediate Value of Lands

(as

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(as most Persons of Ability would be Purchasers) is considerably advanc'd, even to thirty five and forty Years Purchase, near the City of London; but this cannot be expected to be a Standard Rule for the future, or to Times in general.

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THE



THE

**T H E**  
**L A W S**  
**C O N C E R N I N G**  
**Purchases of Lands.**

*The Years Purchase, which all  
Sorts of Lands, Tenements,  
Rents, Reversions, &c. are  
worth; Valuation of Wood,  
Timber, Tithes, Annuities,  
&c. With Precedents of  
Contracts for Sales.*

**L**ANDS are purchased at  
various Rates and Prices  
in this Kingdom; accord-  
ing to their Situation for  
Business, Conveniency of Markets,  
and for Carriage of Goods, &c.

*Various  
Rates of  
Purchases  
of Lands.*

**B**

**And**

## The Laws concerning

And notwithstanding an Estate in *Wales* of so much a Year, is generally affirm'd to be as good as one of the same yearly Rent, near the City of *London*, the Income to the Owner being equal, yet, rightly considered, if the same Estate were situated near to *London*, it would be much more valuable: The Improvements to be made to one and the other are beyond Competition; and *London*, the greatest Mart in the World, would sufficiently shew its Influence in cases of this Nature.

*Estates in  
Fee, what  
sold for.*

For these Reasons I shall make a just Difference in the Rates of Purchases in some Parts of *England*: And to begin with my Business in Hand, an Estate of Freehold in Lands is commonly valued in the Country, at twenty Years Purchase, if there be no extraordinary Appurtenances of Wood and Timber beyond what are necessary for Repairs, Fire-boot, Gate-boot, &c. But if there be such Appurtenances of Timber, or Mines, &c. more Years Value <sup>shall</sup> be insisted upon by



by the Seller, in proportion to the Valuation of the Timber, &c. I have known six and twenty Years Purchase, and more, given in these Cases where the Estate has been but indifferently situated. Lands near *London* will yield about five and twenty Years Purchase; and in *Wales, &c.* generally not above Eighteen or Nineteen.

The Fee of Houses in *London* Value of Houses. will yield seventeen or eighteen Year's Value, if they are in good Repair; but if they want Reparation, an Abatement must be made of a Year's Purchase or more, as the Expence of the Repairs shall require it; And sometimes the Ground-Rents are so high to superior Lords, that less is to be given on that Account; and in all Purchases, extraordinary Deductions out of the Rent are to be consider'd to the Buyer. Houses not in *London*, but otherwise well situated, (without any Lands to them) will yield sixteen or seventeen Years Purchase.

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A Lease of a House for 30 Years is worth about 8 Years Purchase in London, and for 21 Years about 6 Years Value.

*Fee-Farm-  
Rents,  
Ground-  
Rents, &c.*

When Fee-Farm-Rents are to be sold, it is no difficult Matter to procure twenty-three, four, or twenty-five Years Purchase, let them be issuing out of Lands lying in any part of *England*; these are certain, and without any thing to be deducted for Repairs, Taxes, &c. unless it be the Land-Tax. And the Fee of Ground-Rents is worth about five and twenty Years Purchase.

*Estates for  
Lives,  
Leaseholds,  
Copyholds,  
&c.*

Estates for Lives are usually sold at the Rates following. A Freehold Lease for three Lives absolute, or a Copyhold Estate for the like Time, fourteen Years Purchase may be demanded; for the first Life Eight, four for the Second, and two for the Third and last Life; or seven, five, and two. But where the Rents and Heriots reserv'd to the Lord are considerable; (as where the Quit-Rent exceeds 1*s.* in the Pound

Pound per Ann. of the yearly Value of the Lands, or a Heriot more than is usual is reserv'd) in these Cases the Fines to be paid are to be lessen'd as those are increas'd. Thirteen Years Purchase is usually given for a Chattel-Lease for three Lives.

For the Exchange of a Life one Year's Purchase is given, unless it be a sickly Life for a healthy one, &c. when two or three Years Purchase may be insisted upon; a Widdowhood will yield one Year's Purchase. These Widdowhoods are very pernicious to Lords of Manors, as it is in the Power of a Life, after he has liv'd to the greatest Age, to marry a young Woman on his Death-bed, and by that means the Lord be kept out of the Estate an unreasonable Term after the Decease of such Life, perhaps sometimes forty or fifty Years; for which Reason I would advise all Lords of Manors, as Lives drop on their Estates, to grant the Reversions for the most part by Chattel-Lease, and not by Copy, whereby these Inconveniencies will

*Casualties  
relating to  
Life-Lands*

## The Law concerning

be avoided. For a Licence to Let the Tenant usually pays half a Year, or a Year's Value.

*Value of  
Reversions  
in Fee, An-  
nuities,  
&c.*

The Fee in Reversion after Lives, on Lands held by Copy of Court-Roll, is worth Nine, seven and five Year's Purchase after one, two, and three Lives; and more where there is Timber, &c. of Value, or the Estate is or may be improveable when it falls; for Improvements are in all Cases to be regarded. An Annuity, or Rent-Charge issuing out of an Estate will yield about ten Years Value. The Government (by 4 W. & M.) granted Annuities of 14 *l.* per Cent. for a single Life, and 10 per Cent. upon Survivorship of Lives for 99 Years, for Moneys borrow'd.

*Valuation  
of Timber.*

As to Timber it is usually bought by the Tun; Oak-Timber commonly sells for about forty Shillings per Tun in the Place; Ash and Elm about 30 *s.* per Tun. And Coppice Wood, or Underwood will yield from 8 *l.* to 10 *l.* per Acre (being twelve or fourteen Years growth) according

according to its Goodness; if it be of longer standing it will sell for more, and as some Soils produce better Timber than others, there is often-times a Difference of Price in Wood of the same Growth.

The last Particular I have to mention relating to Purchases is Tithe of Corn, Hay, &c. sold by Persons entitled to the perpetual Advowson of Parsonages, &c. These, in regard they have no Buildings, to require the Expence of Reparations, will yield somewhat more than Lands ordinarily do, viz. about one or two and twenty Years Purchase.

This is all I shall observe concerning the Rates and Prices for which Lands, Tenements, Houses, Rents, &c. are usually sold; I next proceed to Precedents of Articles and Contracts for Sale of Estates; and I shall first premise that by 29 Car. 2. All Contracts and Agreements not to be perform'd in a Year are to be put in Writing, and attested; and Contracts for the Sale of Goods of 10 l. Value are to be

~~The Law~~ concerning  
made in Writing, or Earnest is to  
be given, otherwise they are ad-  
judg'd fraudulent and void.

Articles  
for Sale of  
an Estate.

*Articles of Agreement, in-  
dented, made, concluded  
and agreed upon this Day,  
&c. in the Year, &c. Be-  
tween A. B. of, &c. Gent.  
of the one Part, and C. D.  
of, &c. of the other Part,  
as followeth, viz.*

**I***mprimis*, The said A. B. in Con-  
sideration of the Sum of 1000 l.  
of lawful Money of Great-Britain  
to be paid him as herein after men-  
tioned, doth hereby Covenant and  
Agree to and with the said C. D. That  
he the said A. B. shall and will at  
the Costs and Charges of the said  
C. D. on or before, &c. next com-  
ing, by such Conveyances, Ways  
and Means in the Law, as his  
Counsel shall reasonably advise,  
well and sufficiently grant, convey  
and

and assure to the said C. D. and his Heirs, or to whom he or they shall appoint, and to such Uses as he or they shall direct: All that Messuage or Tenement, called, &c. situate and lying in, &c. with the Pieces or Parcels of Land following, to the same belonging, viz. One Piece of arable Land called, &c. containing by Estimation, &c. more or less; one Piece or Parcel of Meadow-Ground, &c. with Covenants, to be therein contained against all Incumbrances done or committed by him the said A. B. &c.

*Item,* The said C. D. for himself, his Heirs and Assigns, doth covenant and grant to and with the said A. B. his Heirs and Assigns, That he the said C. D. shall and will on executing the said Conveyance, pay unto the said A. B. his Heirs or Assigns, the said Sum of 1000 l. as and for the Purchase, Money for the said Messuage, Tenement and Lands above mentioned.

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*Item,* It is farther agreed by and between the said Parties to these Presents, That the said C. D. his Heirs and Assigns, shall and may forthwith enter into and upon the said Premises, and receive the Profits thereof to his and their own Use and Uses, paying to the said A. B. Interest for the said 1000 l. after the Rate of 5 l. per Cent. per Ann. from the Day of the Date of these present Articles, until the said Conveyance or Conveyances shall be fully perfected and executed. In Witness whereof we have hereunto set our Hands and Seals the Day and Year above written.

A. B.  
C. D.

Sealed and Delivered  
in the Presence of

E. F.  
G. H.

*Articles*

Articles of Agreement made,

&c. Between A. B. of, &c.

Esq; and M. his Wife, (sole

Daughter and Heir of T. D.

late of, &c.) of the one

Part, and C. D. of, &c.

of the other Part.

Articles for  
conveying  
Lands, &c.  
on a Pur-  
chase.

**W**Hereas the said T. D. was  
in his Life-time seiz'd in  
Fee, or some other Estate of Inhe-  
ritance, of and in All that Messuage,  
&c. lying, &c. which said Mes-  
suage, &c. with the Appurtenan-  
ces, by the Death of the said T. D.  
are descended and come unto the  
said M. Wife of the said A. B. as  
sole Daughter and Heir of the said  
T. D. Now these Presents Wit-  
ness, That the said A. B. and M.  
his Wife do for themselves, their  
Heirs, Executors, and Administra-  
tors, Covenant, Promise and Agree  
to and with said C. D. that they  
the

# The Laws concerning

the said A. B. and M. his Wife,  
for and in consideration of the Sum  
of, &c. to be paid as herein-after  
is mentioned, shall and will at or  
before, &c. next ensuing the Date  
hereof, at the Costs and Charges  
in the Law of the said C. D. make  
a good, perfect and absolute Estate  
in Fee-simple of the said Messuage,  
&c. to the said C. D. &c. whether  
by Fine or otherwise, as by the said  
C. D. or his Counsel shall be ad-  
vised.

And the said C. D. for himself,  
his Heirs, Executors and Admini-  
strators, doth covenant, promise  
and agree to and with the said  
A. B. his Heirs, Executors and Ad-  
ministrators, that upon the making  
of such Assurance of the said Pre-  
misses as aforesaid, and acknow-  
ledging of a Fine by the said A.  
and M. in such manner as the  
said C. D. shall be advised, that  
he the said C. D. shall and will pay,  
or cause to be paid unto the said  
A. B. the full Sum of, &c. In  
Witness, &c.

*Articles*

*Articles of Agreement in- Articles  
dented, had, made, &c. for the Sale  
Between Sir A. B. of, &c. of a Manor,  
of the one Part, and C. D. levying a  
of, &c. Esq; of the other Fine, &c.  
Part.*

**I***mprimis*, It is agreed between the  
said Parties, and the said Sir  
A. B. doth hereby Covenant and  
Agree to and with the said C. D.  
and his Heirs, for and in Confide-  
ration of the Sum of, &c. to be  
paid in such manner as herein after  
is mentioned, to grant, bargain, sell  
and convey unto the said C. D.  
and his Heirs, All that the Manor  
and Lordship of, &c. with the  
Rights, Royalties, Members, and  
Appurtenances thereof in the said  
County of, &c. And also all that, &c.  
and all and singular the Messuages,  
Farms, Lands, Meadows, Pastures,  
Woods, Wood-Ground, Wastes,  
Heaths, Furzes, Moors, Marshes,  
Wa-

## The Lettes concerning

Waters, Fishings, Fishing-places, Courts, Court-Leets, Profits, Commons, Commodities, Hereditaments, and Appurtenances whatsoever to the said Manor and Lordship, &c. and every or any of them belonging or appertaining, or therewithal used, occupied, or enjoyed, or accepted, reputed, deemed, or taken as Part, Parcel or Member thereof, or of any part thereof. And all other the Manors, Messuages, Lands, Meadows, Pastures, Woods, Wood-Grounds, Commons, Tenements, and Hereditaments, whatsoever, whereof the said Sir A. B. or any Person or Persons in Trust for him, standeth or stand seised, situate, lying, or being within the Towns; Parishes, Hamlets, Precincts, and Territories of, &c. in the County of, &c. aforesaid.

And the said Sir A. B. doth hereby also Covenant with the said C. D. that he the said Sir A. B. and M. his Wife shall and will, on or before, &c. now next ensuing, le-

vy a Fine, and make such further Assurances of all and singular the Premises abovementioned unto the said C. D. his Heirs and Assigns as shall be reasonably advised or required. And that the Trustees and Mortgagees of the said Estate shall assign their Estates and Mortgages in and upon the said Premises to the said C. D. his Heirs, Executors or Administrators, or to such as he or they shall appoint.

And the said C. D. doth hereby for himself, his Heirs, Executors and Administrators, covenant, grant and agree to and with the said Sir A. B. that he the said C. D. in Consideration thereof shall and will pay the Sum of, &c. in manner following (that is to say) the Sum of, &c. part thereof, &c. on, &c. in discharge of the Mortgage now upon the said Estates, the said, &c. assigning his Mortgage to the said C. D. or to such Person or Persons as he shall appoint, and the Sum of, &c. Residue of the said, &c. to the said Sir A. B. in full for the

Pur-

## The Laws concerning

Purchase of the Manor and Premises above-mentioned.

And it is hereby mutually agreed by and between the said Parties to these Presents, That the said C. D. his Heirs or Assigns, shall and may enter into and upon, and take Possession, and receive the Rents, and Profits of all and singular the said Premises above-mentioned, at, &c. next ensuing the Date of these Presents.

And it is hereby further agreed, That the Costs and Charges of Suit (if any be) in procuring a good Conveyance from the said Sir A. B's Trustees or Mortgagees is to be deducted and allowed out of the last Payment of the said Sum of, &c. to the said Sir A. B. And that the said C. D. his Heirs, Executors or Administrators, shall have liberty to make Use of the Name of the said Sir A. B. in any Suit or Suits for that purpose. In Witness, &c.

Articles

*Articles of Agreement, made, &c. Between A. B. of, &c. of the one Part, and C. D. of, &c. of the other Part.*

*Articles for Assignment of a Term, to attend the Fee conveyed.*

**I** *Præmissis*, Whereas by Indenture bearing Date, &c. made or mentioned to be made between E. F. of, &c. of the one Part; and G. H. of, &c. of the other Part: The said E. F. for the Considerations therein mentioned, did demise and grant unto the said G. H. All that Messuage, &c. situate, &c. together with all Ways, Passages, and Appurtenances thereunto belonging. To have and to hold the said Messuage and Premises with the Appurtenances unto the said G. H. his Executors, Administrators and Assigns, from, &c. then last past unto the full End and Term of 21 Years, from thence next ensuing, At and under the yearly Rent of, &c. payable, &c.

as

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as in and by the said Indenture of Lease, Relation being thereunto had more at large may appear. And whereas the Estate and Interest of the said *G. H.* in and to the said Premises for the Remainder of the said Term of 21 Years, is by mean Assignments come unto, and legally vested in the said *A. B.* And whereas the said *E. F.* hath since conveyed the Inheritance of the said Premises unto the said *C. D.* and his Heirs. Now it is hereby agreed by and between the said Parties to these Presents, and the said *A. B.* for himself, his Executors, Administrators and Assigns, doth covenant, promise and agree to and with the said *C. D.* his Executors and Administrators by these Presents, That he the said *A. B.* and all other Person and Persons having or claiming any Estate, Title or Interest in the said Premises, by, from, or under him or the said *G. H.* shall and will on or before, &c. next, for the Considerations hereafter mentioned, grant, bargain,

bargain, sell, assign and set over unto the said C. D. his Executors, Administrators and Assigns, or to such other Person or Persons as he shall appoint, the said recited Indenture of Lease, and all his and their Estate, Title, Interest, Term of Years yet to come and unexpired, Claim and Demand whatsoever, in and to the said Messuage and Premises, with the Appurtenances, by Virtue of the said recited Indenture of Lease, or otherwise howsoever, by such Conveyance as Counsel shall advise.

In Consideration of which Assignment the said C. D. doth hereby covenant, promise and agree to pay or cause to be paid unto the said A. B. his Executors, Administrators or Assigns the Sum of, *£*c. on the said Day, *£*c. next, deducting thereout all such Sum and Sums of Money as are due, and in arrear unto the said C. D. of the said yearly Rent of, *£*c. payable by the said recited Indenture of Lease until, *£*c. next, which the said A. B. doth

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doth hereby promise and agree,  
shall thereout be deducted accord-  
ingly. In Witness, &c.

Contract  
for build-  
ing a House  
on Lands.

**M**emorandum, That on this Day,  
&c. It is agreed between  
A. B. of, &c. Gent. and C. D. of,  
&c. Carpenter, in manner follow-  
ing, viz. The said C. D. for the  
Considerations herein-after expres-  
sed, doth for himself, his Execu-  
tors and Administrators, covenant,  
promise and agree to and with the  
said A. B. his Executors, Admin-  
istrators and Assigns, That he  
the said C. D. or his Assigns shall  
and will within the Space of, &c.  
next after the Date hereof, in good  
and Workman-like manner, and  
according to the best of his Art and  
Skill, at, &c. in the Parish of, &c.  
well and sufficiently erect, build, set  
up, and substantially finish one House  
or Messuage according to the Draught  
or Scheme hereto annexed, of the  
Dimensions following, (viz.) Forty  
foot in Front, thirty foot Deep, &c.  
and to compose the same with such  
Stone,

Stone, Brick, Timber, and other Materials, as the said *A. B.* or his Assigns shall find and provide for the same, (or shall erect, build, &c. one Messuage or Tenement, finding all Materials of Stone, Brick, Timber, &c. in the best manner according to the Draught or Scheme, &c.)

In Consideration whereof the said *A. B.* doth for himself, his Executors and Administrators, covenant and promise to and with the said *C. D.* his Executors, Administrators and Assigns, well and truly to pay or cause to be paid unto the said *C. D.* his Executors, Administrators or Assigns, the full Sum of, &c. in manner following, (that is to say) the Sum of, &c. part thereof at the beginning of the said Work, &c. more, other part thereof, when the said Work shall be half done, and the remaining, &c. in full for the said Work, when the same shall appear to the said *A. B.* to be compleatly finished. And also that the said *A. B.* (or the

**The Laws concerning**

the said C. D.) his Executors, Administrators or Assigns, shall and will at his and their own proper Expence find and provide all the Stone, Brick, Tiles, Timber, and other Materials necessary for making and building of the said House in manner aforesaid.

And for the Performance of all and every the Articles and Agreement above-mentioned, the said A. B. and C. D. do hereby bind themselves, their Executors, Administrators and Assigns, each to the other, in the penal Sum of, &c. (double the Consideration-Money) firmly by these Presents. In Witness, &c.

*A Summary of all the Laws and Statutes relating to Purchases of Lands, Tenements, Rents, &c. and the common Deeds of Conveyance, &c.*

**T**HE common Deeds and Instruments made Use of for the conveying of Lands, Tenements, &c. on Purchases, &c. are Bargains and Sales, Deeds of Gift, Grants, Lease and Release, and Confirmation, Indentures to lead Uses of Fines and Recoveries, Exchanges, Surrenders, Assignments, Mortgages, &c.

A Deed of Bargain and Sale is an Instrument for transferring the Property of a Thing from one Man to another, upon good and valuable Considerations. *Bargain and Sale.*

All things for the most part, that are grantable by any other way from one Man to another, are transferrable by Bargain and Sale;

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and therefore Lands, Tenements, Rents, Advowsons, Commons, Tithes, Profits of Courts, and the like, may be granted by way of Bargain and Sale, in Fee-simple, Fee-tail, for Life, or for Years: And all manner of Goods, Chattels, &c. are grantable by Bargain and Sale. *West. Symb.*

Where any Freehold is to be conveyed, the Bargain and Sale must be inrolled within six Months, according to the Direction of 27 H. 8. There must be a good and valuable Consideration given, or at least said to be given for the Lands, &c. *Co. 176.* And if the Deed make mention of Money paid, as in Consideration of 100 l. &c. and in truth no Money is paid, yet the Bargain and Sale may be good, because no Averment will lie against that which is expressly affirm'd in the Deed. *Dyer 90.*

A Bargain and Sale inrolled must be indented, and not a Deed-Poll, for if it be, the Lands will not pass: And if it be made of Land in Possession

feſſion or Reversion, there needs no Livery of Seisin or Attornment to perfect it; for it is good without, where it is inrolled. A Bargain and Sale of Goods, Chattels, Leases, &c. may be made without Consideration, and it matters not whether it be inrolled or indented.

If Lands are passed in Consideration of Money only, the Deed must be inrolled to perfect it; but if for Money and Natural Affection, the Land will pass without Inrolment. *Style's Rep.* 188. Inrolment is good upon a Bargain and Sale, although the Grantee dies before the same is perfected. 2. *And.* 161.

Neither the Death of Bargainor or Bargainee before Inrolment shall hinder the passing of the Estate.

*Flob. Rep.* 136. If there be two Joint-tenants, and one of them bargains and sells the Land by Indenture of Bargain and Sale, but dies before Inrolment, his Companion shall not have it by Survivorship; for the Use immediately passes from the executing of the Deed,

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if it be afterwards inrolled as the Statute directs. 2. *And.* 161.

If several Persons seal a Deed, and but one of them acknowledge it, afterwards it is inrolled; this is a good Inrolment within the Statute, and the Deed may be given in Evidence, as a Deed inrolled at a Trial. *Style's Rep.* 462.

If a Man for valuable Consideration by Deed indented bargain and sell Lands to another and his Heirs, and before the Inrolment of this Deed, the Bargainor levies a Fine, or makes a Feoffment to the Bargainee and his Heirs of the same Land, and after, within the six Months, the Deed is inrolled, the Bargainee shall be in by the Fine or Feoffment, and not by the Bargain and Sale; for when the Common Law and the Statute Law interfere, the Common Law shall be preferred. *Co. 2 Inst.* 671, 672, &c.

Until a Deed is inrolled, the Estate of the Freehold is in the Bargainor. 2. *Cro.* 52. A Bargainee

gaine cannot maintain an Action of Trespafs before Entry, though he may surrender, assign or release. *Carter's Rep.* 66. And a Bargainee of a Reversion shall not take Advantage of a Condition annexed to a Lease for Payment of Rent, without Notice given of the Grant. *2 Cro.* 146.

If a Man bargain and sell his Land to another for Money, or other Consideration, and no mention is made *to him and his Heirs*, yet this is a good Fee-simple. *27 H.* 8. But if a Man seized of Lands in Fee, makes a Lease for Years, and afterwards bargains and sells the same Land to the Lessee and his Heirs, without any Gift or Grant express'd in the Deed; by this the Estate of the Lessee is not enlarged 'till the Inrolment of the Deed; Inrolment gives it Perfection; and without it, this can be no Confirmation. *Dalison's Rep.* 37.

If Tenant for Life bargains and sells his Land by Deed inrolled, it is a Forfeiture, although no Fee-

## The Laws concerning

simple paffes. 4 *Leon.* 251. Upon a Bargain and Sale, where Money was paid by the Bargainee to the Use of a Stranger, the last Use was adjudg'd void. 2 *And. n.* 52. f. 81.

### *A Bargain and Sale of Lands.*

**T**HIS Indenture made, &c. Between *A. B.* of, &c. of the one Part, and *C. D.* of, &c. of the other Part; Witnesseeth, That the said *A. B.* for and in Consideration of the Sum of, &c. to him in Hand paid by the said *C. D.* the Receipt whereof the said *A. B.* doth hereby acknowledge, He the said *A. B.* Hath granted, bargained and sold, aliened, and confirmed, and by these Presents doth grant, bargain and sell, alien and confirm unto the said *C. D.* his Heirs and Assigns for ever, all that piece or parcel of Ground commonly called or known by the Name of, &c. containing by Estimation, &c. situate,

tuatē, &c. now in the Tenure of, &c.  
And also all Trees, Woods, Under-  
woods, Tenths, Tithes, Commons,  
Common of Pasture, Profits Com-  
modities, Advantages, Emoluments  
and Hereditaments whatsoever to  
the said Piece or Parcel of Ground  
above-mentioned belonging, or in  
any wise appertaining. And also  
the Reversion and Reversions, Re-  
mainder and Remainders, Rents and  
Services of the said Premises, and  
of every Part thereof. And also  
all the Estate, Right, Title, Inte-  
rest, Claim and Demand whatso-  
ever, of him the said *A. B.* of, in,  
and to the same Premises, and every  
Part thereof. To have and to hold  
all and singular the said Premises  
above mentioned, and every part  
and parcel thereof, with the Ap-  
purtenances, unto the said *C. D.* his  
Heirs and Assigns, To the only pro-  
per Use and Behoof of the said *C. D.*  
his Heirs and Assigns for ever. And  
the said *A. B.* for him and his Heirs  
the said Piece or Parcel of Ground  
and Premises, and every Part there-

## The Latos concerning

of against him and his Heirs, and against all and every other Person and Persons whatsoever, to the said C. D. his Heirs and Assigns shall and will warrant and for ever defend by these Presents. In Witness, &c.

## *A Bargain and Sale of Goods and Chattels.*

**K** Now all Men by these Presents, That I A. B. of, &c. for and in Consideration of the Sum of, &c. of lawful *British* Money to me in Hand paid, at and before the Sealing and Delivery of these Presents, by C. D. of, &c. The Receipt whereof I do hereby acknowledge, Have granted, bargained and sold, and by these Presents, Do fully, freely, and absolutely grant, bar and sell unto the said C. D. all the Goods, Householdstuff, &c. mentioned and contained in the Schedule hereunto annexed, now in the Possession of, &c. (or remaining and being in a certain Messuage, situate,

tuate, &c. To have and to hold  
 all and singular the said Goods,  
 Householdstuff, &c. and every of  
 them, by these Presents bargained  
 and sold, or mentioned or intend-  
 ed to be bargained and sold unto  
 the said C. D. his Executors, Ad-  
 ministrators and Assigns for ever.  
 And I the said A. B. for my self,  
 my Executors and Administrators,  
 all and singular the said Goods and  
 Premises unto the said C. D. his Exe-  
 cutors, and Administrators, against  
 me the said A. B. my Executors,  
 Administrators and Assigns, and a-  
 gainst all and every other Person  
 and Persons whatsoever, shall and  
 will warrant and for ever defend  
 by these Presents. In Witness,  
 &c.

## The Laws concerning

*A Bargain and Sale, with a  
Condition annexed.*

**T**O all People to whom these Presents shall come, I *A. B.* of, &c. send greeting; Know ye, That I the said *A. B.* for and in Consideration of the Sum of, &c. to me in Hand, at and before the Execution of these Presents, well and truly paid by *C. D.* of, &c. The Receipt whereof I do hereby acknowledge, Have bargained and sold, and by these Presents do bargain and sell unto the said *C. D.* One Silver Tankard, &c. To have and to hold the said bargained Premises unto the said *C. D.* his Executors, Administrators and Assigns, to the only proper Use and Behoof of him the said *C. D.* his Executors, Administrators and Assigns for ever. And I the said *A. B.* for my self, my Executors, and Administrators, the said bargained Premises unto the said *C. D.* his Executors,

cutors, Administrators and Assigns, against all Persons shall and will warrant and for ever defend by these Presents. Provided always, And it is hereby agreed between the Parties to these Presents, That if I the said *A. B.* my Executors, Administrators or Assigns, or any of us, do and shall well and truly pay or cause to be paid unto the said *C. D.* his Executors, Administrators or Assigns, the Sum of, *&c.* on, *&c.* next ensuing the Date hereof, for Redemption of the said hereby bargained Premisses, Then these Presents, and every Clause, Article, and thing herein contained, shall cease and be void, any thing herein contained to the contrary thereof notwithstanding. In Witness, *&c.*

A Deed of Gift is applied to two kinds of Conveyances; the one where Lands are given or granted to another, and the other an Instrument or Writing made for passing of Goods from one Man to another, where there is no Bargain

*Deeds of Gift.*

## The Laws concerning

and Sale ; and this Deed of Lands is commonly made in Consideration of natural Love and Affection, Service, &c.

A Gift may be either by Deed, or in Law ; as where a Marriage is celebrated between a Man and a Woman, by the Marriage the Law gives all the Goods of the Wife to the Husband ; and it is the same in cases of Executors ; the taking of the Executorship entitles a Man to the Testator's Goods, but subject nevertheless to the Payment of his Debts, &c. *Co. Lit.* 351.

There must be no Fraud in making of Deeds of Gift, for if any such Deed be made of any thing with Intent and of Purpose to deceive and defeat Creditors of their just Debts, the Law adjudges this Deed void, as to and against such Creditors ; but as to the Party that makes it, and all others, it is good. *Stat.* 27. *Eliz.*

*A Deed of Gift of Lands.*

**T**HIS Indenture made, &c. Between *A. B.* of, &c. Esq; of the one Part, and *T. B.* of, &c. Son of the said *A. B.* of the other Part; Witnesseth, That the said *A. B.* for and in Consideration of the natural Love and Affection, which he the said *A. B.* hath and beareth unto the said *T. B.* As also for the better Maintenance, Livelihood, and Preferment of him the said *T. B.* Hath given, granted, aliened, enfeoffed, and confirmed, and by these Presents doth give, grant, &c. unto the said *T. B.* his Heirs and Assigns, all that Messuage or Tenement, &c. and also, all those several Pieces or Parcels of Lands following, *viz.* One Meadow containing, &c. called by the Name of, &c. and all and singular the Houses, Buildings, Barns, Stables, Courts, Gardens, Orchards, Trees, Woods, Underwoods, Commons; Com-

## The Law concerning

Common of Pasture, Ways, Paths, Passages, Waters, Watercourses, Easements, Profits, Commodities, Privileges, Advantages, Emoluments, Hereditaments, and Appurtenances whatsoever, to the said Messuage or Tenement, Lands and Premises hereby mentioned or intended to be granted, or to any of them, or to any Part or parcel of them belonging, or in any wise appertaining, or therewithal commonly used or enjoyed, or accepted, reputed, taken, or known, as Part, Parcel of, or belonging to the same. And the Reversion and Reversions, Remainder and Remainders, Rents and Services of all and singular the said Premises, and all the Estate, Right, Title, Interest, Property, Claim and Demand whatsoever, of him the said A. B. of, in and to the said Messuage or Tenement, Lands and Premises, and of in and to every Part and Parcel thereof, with their and every of Appurtenances. And all Deeds, Evidences and Writings concerning the said Premises, or any part there-

thereof, now in the Hands or Custody of the said A. B. or which he may get or come by, without Suit in Law, together with true Copies of all other Deeds, Evidences and Writings concerning the said Premises, or any part thereof, amongst other Lands, the same Copies to be made and written at the Costs and Charges of the said T. B. his Heirs or Assigns. To have and to hold, The said Messuage or Tenement, Lands, Hereditaments, and all and singular the Premises hereby granted and conveyed, or mentioned or intended to be granted and conveyed, with their and every of their Appurtenances, unto the said T. B. his Heirs and Assigns, to the only proper Use and Behoof of him the said T. B. his Heirs and Assigns for ever. And the said A. B. for himself, his Heirs, Executors, and Administrators, doth covenant, promise, and grant to and with the said T. B. his Heirs and Assigns by these Presents, That he the said T. B. his Heirs and Assigns,

**The Latas concerning**

Assigns, shall and lawfully may from henceforth for ever hereafter, peaceably and quietly, have, hold, use, occupy, possess and enjoy the said Messuage, Tenement, Lands, Hereditaments, and Premises hereby granted and conveyed, or mentioned or intended to be hereby granted and conveyed, with their and every of their Appurtenances, free, clear, and discharged, or well and sufficiently saved and kept harmless, of and from all former and other Grants, Bargains, Sales, Gifts, Jointures, Feoffments, Leases, Dow-ers, Estates, Entails, Rents, Rent-charges, Arrearages of Rents, Statutes, Judgments, Recognizances, Executions, Statutes-Merchant and of the Staple, Extents, and of and from all other Titles, Troubles, Charges, and Incumbrances whatsoever, had, made, committed, done or suffered, or to be had, made, committed, done or suffered, by him the said A. B. his Heirs, Executors or Administrators, or any other Person or Persons lawfully

fully claiming, or to claim, by, from, or under him, them, or any or either of them. In Witness, &c.

*A Deed of Gift of Chattels.*

**T**O all People to whom these Presents shall come, I A. B. of, &c. send Greeting, Know ye that I the said A. B. for and in Consideration of the natural Love and Affection, which I have and bear unto my beloved Brother T. B. of, &c. And also for divers other good Causes and Considerations me hereunto moving. Have given, and granted, and by these Presents do give, grant, and confirm, unto the said T. B. All and singular my Goods, Chattels, Debts, ready Money, Plate, Jewels, Household-stuff, &c. particularly mentioned in the Schedule hereto annexed, in whosoever's Hands, Power and Custody, the same may be, To have and to hold all and singular the said Goods, Chattels, Debts, and

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and all other the aforesaid Premisses, unto the said T. B. his Executors, Administrators and Assigns, to his and their own proper Use and Uses, for ever. And I the said A. B. all and singular the aforesaid Goods, Chattels, and Premisses to the said T. B. his Executors, Administrators and Assigns, against all Persons do warrant and for ever defend by these Presents. And further, I the said A. B. have put the said T. B. in Possession of all and singular the Premisses aforesaid, by the Delivery unto him at the Sealing hereof, of one Piece of broad Gold, of the Coin of, &c. valued at and passing for, &c. In Witness, &c.

*Grants.*

This Deed is a Conveyance or Gift by Writing, of such an incorporate Thing as lieth in Grant, and cannot be conveyed by Word only, without Deed. But an Office, or any Chattels personal may be granted by Word only.

Persons attainted of High Treason, or guilty of Felony, may make a Deed of Gift or Grant, and  
be

be good against all Persons, except the King, and the Lord of whom the Lands are held; and a Person outlawed in a personal Action may give or grant his Goods or Chattels, and his Conveyance will be effectual against all others, but the King. *Perk. Sect. 26.*

An Infant may be a Grantee, but at his full Age he may either agree to the Grant, or avoid it. *Co. Lit. 2.* Women covert may be Grantors, if the Husband do not disagree to it; but if he disagrees it is void. *Ibid.*

The Grantee himself must take by the Grant immediately, and not a Stranger, or any one *in futuro*. A Grant to a Man and his Issue will be good to a Bastard, reputed to be his Son: And a Bastard may give or grant Lands, after he has acquired a reputed Name. *Perk. Sect. 26, &c.*

Fee-simple Lands are chargeable with a Grant, any way: A Reversion may be granted as such, as well as a Possession. And Grants ought

## The Law concerning

ought to be of things certain ; but if a Grant be made of a Horse in a Stable, where there are several, and no particular one is mentioned, in such case the Grantee may chuse his Horse. *Bro. Grant. 77.*

If a Man has a Manor in the County of *A.* and Land is holden of this Manor, lying in the County of *B.* by Grant of the Manor, with the Appurtenances (by Fine) in the County of *B.* the Services of the Land in the other County shall pass. *21 Ed. 3. c. 18.*

If a Man having Land in which there is a Mine of Coals, make a Grant of the Land for Life, or Years, (without mentioning any Mines) the Grantee may dig and take the Profits of the Mines as were open at the Time of the Grant made ; but he cannot dig any new Mines. *Co. Lit. 54.*

A Grant of an Annuity for a Man and his Heirs, to be paid for thirty Years, to commence after the Death of the Grantor, is a good Grant, and charges the Heir. *Lit. Rep.*

*Rep.* 245. One Executor or Administrator may sell and dispose of any of the Deceased's Goods, and it will bind all the rest: But one Member of a Corporation may not give or grant the Corporation-Lands without the rest. *Perk. Sect.* 31, 32, &c.

If one make Apparel for another Person, and put it upon him to use and wear, this is a Grant in Law of the Apparel it self. *1 H. 4. c.* 31.

*Grant of an Annuity issuing out of Lands.*

**T**HIS Indenture made, &c. Between *A. B.* of, &c. of the one Part, and *C. D.* of, &c. of the other Part; Witnesseth, That the said *A. B.* for and in Consideration of the Sum of, &c. to him in Hand paid by the said *C. D.* The Receipt whereof is hereby acknowledged, he the said *A. B.* hath given, granted and confirmed, and by these  
Pre-

**The Lais concerning**

Presents doth give, &c. unto the said C. D. and his Assigns, one Annuity or yearly Rent-charge of, &c. to be received, taken, had, and issuing out of all that Messuage, &c. situate, &c. with all and singular the Hereditaments and Appurtenances thereunto belonging, or used as Part or Parcel thereof. To have and to hold the said Annuity or yearly Rent-charge of, &c. above-mentioned, and every Part and Parcel thereof unto the said C. D. and his Assigns, for and during the natural Life of him the said C. D. payable and to be paid at and upon, &c. yearly, by even and equal Portions. And if it shall happen the said Annuity or yearly Rent-charge of, &c. or any part thereof, to be behind and unpaid in part or in all, by the Space of one and twenty Days, next after either of the said Days or Times for Payment thereof, whereon the same should, or of Right ought to be paid as aforesaid, that then and so often, and at any time thence-  
after,

after, it shall and may be lawful to and for the said C. D. and his Assigns, into the said Premises, or into any part thereof, to enter and distrain, and the Distress and Distresses then and there found to take, lead, drive, carry away and impound, and the same in Pound to detain and keep until the said Annuity, and the Arrears thereof, (if any shall happen to be) together with all Costs and Charges thereabout, shall be fully paid and satisfied. And the said A. B. for himself, his Heirs and Assigns doth Covenant and Grant to and with the said C. D. his Executors, Administrators and Assigns, That he the said A. B. his Heirs or Assigns shall and will well and truly pay or cause to be paid unto the said C. D. or his Assigns, the said Annuity or yearly Rent-charge of, &c. above-mentioned, at the Days and Times, and in manner and form above express'd, according to the true intent and meaning of these Presents. And also, That the said Messuage, Lands,

## The Law concerning

Lands, &c. above-mentioned to be charged or chargeable with the said Annuity or yearly Rent-charge hereby granted, shall from time to time be and continue Overt, and sufficient for the Payment of the said Annuity yearly, during the Life of the said C. D. In Witness, &c.

*Lease and  
Release,  
&c.*

A Release is either a Conveyance of a Man's Interest or Right in Lands, Tenements, &c. or it is the giving or discharging of a Right or Action, which a Man hath or may have or claim against another.

The Conveyance of Lands by Release is thus made: *First*, A Lease for a Year, or Bargain and Sale is to be drawn, to give Possession of the Lands intended to be conveyed, by force of the Statute 27. H. 8. for transferring of Uses into Possession; and then the Release is made, which is an absolute Conveyance to the Releasee, and his Heirs for ever.

Before

Before the Statute 27 H. 8. a Deed of Feoffment was esteem'd the most excellent kind of Conveyance; but as by this Conveyance, Livery of Seisin and Possession of the Estate granted are requisite, and by Lease and Release they are not, the Release is more commonly us'd at this time. And Lands may be granted and passed by way of Release, Rights and Titles to Lands, or Goods, &c. but the Person as makes it, ought to have such an Estate in himself, as out of the same may be derived and granted the Estate to the Releasee intended by the Release. *Co. Lit.*

And in case of a bare Right of Lands, the Person to whom a Release is made, must have an Estate of Freehold, either in Deed or in Law, in Possession, or some Estate in Remainder or Reversion. *Co. Lit.* 267.

Where there is a Rent charge, Common of Pasture, or any Profit issuing out of Lands, and he that hath the same makes a Release

of

## The Law concerning

of it to another; this is a good Release, and will extinguish the Rent, if the Releasee be seiz'd of the Land; but if he have only a bare Right it is void. *Co. Lit.* 305.

A Release of a Man's Right in Fee-simple is not good to pass the same; but a Release to a Man and his Heirs will pass as a Fee-simple; and if to a Man and the Heirs of his Body, by this he hath an Estate-Tail. *Lit. Sect.* 465.

A Man leaseth Lands for Life, Remainder in Tail, and afterwards he in Remainder makes a Release of all his Right to the Tenant for Life, and his Heirs; this will be construed only during the Life of the Releasor, by reason of the Entail. 43 *Aff. pl.* 45.

A Release made after a Lease for Life or Years, will amount to a Feoffment: As if a Man let Lands to another for Years or Life, and afterwards release to him all Right in the Land, To have and to hold to him and his Heirs; hereby he hath an Estate in Fee-simple.

*Co.*

*Co. Lit.* 207. But if the Release be made of all a Man's Right, without any more Words, then the Person to whom made hath only an Estate for Life. *Dyer* 263.

Where a Release is made to him that has a Reversion or Remainder in Deed, it shall serve him that hath the Frank Tenement; so shall a Release made to a Tenant for Life, or Tenant in Tail, inure to them in the Reversion or Remainder, if they shew it. *Noy* 76.

A Release made by one that at the time of making it had no Right, is void: And a Release made to one, that at the time of the Release had nothing in the Lands, is also void; for he ought to have a Freehold, or a Possession or Privi-ty. *Noy's Max.* 74, 75.

In a Release of Right to Land, no Estate need be mentioned; for by a Release of a Man's Right to Lands or Tenements for an Hour, he is barred of it for ever after.

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By

## The Law's concerning

By a Release of all a Man's Right to Lands, &c. All Actions, Entry, Title of Dower, Rents, &c. are discharged : And a Release of all Demands is so very extensive, that by it all Rights and Titles to Lands, Conditions annexed to Estates, &c. are released ; also all Statutes, Obligations, Contracts, Covenants, Rents, Actions, Real and Personal, Debts, Executions, &c. are discharg'd. *Co. Lit.* 291.

But this Release doth not discharge a Rent incident to a Reversion due after the Release ; nor a Covenant or Promise that is future, before it be in Being, or a Covenant before broken, Obligation subsequent, &c.

A Creditor being made Executor, or if the Creditor, being a Woman, marries the Debtor, in both these Cases the Debts are released in Law : And in the first Case, the Executor may retain Goods of the Testator, sufficient to satisfy him his Debt. But if an Obligor be made Administrator of the Goods and Chattels of

of

of the Obligee, this will not amount to a Release in Law. *Co. Lit.*

264.

A Confirmation is much of the Nature of a Release, and generally the same Effects are produced by it. *Confirmation.*

A Father grants a Rent-charge for Life, the Son confirms it, and the Father dies; the Grantee brings an Assize for the Rent, and Issue was taken upon the Seisin of the Son, *tempore confirmationis factæ*; and it was held that he who confirms without Warranty, or who has nothing in the Land at the time of the Confirmation made, as the Son in the Life-time of the Father, and the like; that in this Case, the Confirmation shall not bind the Son after the Death of the Father, but he may well say, that he had nothing in the Land at the time of the Confirmation. *Br. Confirm.*

14.

If a Tenant for Life grants a Rent-charge to another and his Heirs, in this case he in the Rever-

## The Lawe concerning

tion must confirm it, otherwise it will be good only for the Life of Tenant for Life. 1 Co. 147. There may be a Recital, Covenants, Warranty, and other things inserted in the Release and Confirmation, if there be occasion; but the Deed will be valid without them.

### *A Release of Right and Title to Lands, &c.*

**T**O all People, &c. *A. B.* of &c. sendeth Greeting, Know ye that the said *A. B.* for and in Consideration of, &c. hath remised, released, and for ever quit-claimed, and by these Presents doth for him and his Heirs fully, clearly and absolutely remise, release, and for ever quit-claim unto *C. D.* of, &c. and to his Heirs and Assigns for ever, All the Estate, Right, Title, Interest, Claim and Demand whatsoever, of him the said *A. B.* of, in, or to All that the Manor of, &c. by any ways or means whatsoever.

To

To have and to hold the said Manor of, &c. unto the said C. D. his Heirs and Assigns, to the only proper Use and Behoof of him the said C. D. his Heirs and Assigns for ever, so that neither he the said A. B. or his Heirs, nor any other Person or Persons for him or them, or in his or their Names or Right, shall or will by any ways or means whatsoever, at any time hereafter claim, challenge or demand any Estate, Right, Title or Interest of, in, or to the said Premises, or any part thereof; but from all and every Action, Estate, Right, Title, Interest, Claim and Demand of, in, or to the said Premises, or any part or parcel thereof, they and every of them shall and be for ever barred and excluded by these Presents. And the said A. B. and his Heirs, the said Manor, Lands, Hereditaments and Premises, with the Appurtenances to the said C. D. his Heirs and Assigns, against him the said A. B. and his Heirs shall and will warrant, and for ever de-

## The Laws concerning

send by these Presents. In Witness, &c.

*A Lease for a Year, whereon  
to ground a Release or Con-  
veyance of Lands.*

**T**HIS Indenture made, &c. Be-  
tween A. B. of, &c. Esq;  
of the one Part, and C. D. of,  
&c. of the other Part; Witneseth,  
That the said A. B. for and in Con-  
sideration of the Sum of 5 s. of,  
&c. to him in Hand paid by the  
said C. D. the Receipt whereof is  
hereby acknowledged, He the said  
A. B. hath granted, bargained and  
sold, and by these Presents doth  
grant, &c. unto the said C. D. All  
that Messuage, &c. And the Re-  
version and Reversions, Remainder  
and Remainders, Rents and Services,  
of the said Premises above menti-  
oned, and of every Part and Par-  
cel thereof, with the Appurtenan-  
nance. To have and to hold the  
said

said Messuage or Tenements, Lands, Hereditaments and Premisses above-mentioned, and every Part and Parcel thereof, with the Appurtenances unto the said C. D. his Executors, Administrators and Assigns, from, &c. for and during, and unto the full End and Term of one whole Year, from thence next and immediately ensuing and following, fully to be compleat and ended. Yielding and paying therefore one Pepper-corn in and upon the Feast of St. Michael the Archangel (if demanded) To the intent that by Virtue of these Presents, and by Force of the Statute for transferring of Uses into Possession, he the said C. D. may be in the actual Possession of all and singular the said Premisses above-mentioned, with the Appurtenances, and thereby be enabled to accept and take a Grant and Release of the Reversion and Inheritance thereof to him and his Heirs, to the only proper Use and Behoof of him the said C. D. his Heirs and Assigns for ever.

*A Release and Confirmation  
of Lands.*

**T**HIS Indenture made, &c. Between *A. B.* of, &c. of the one Part, and *C. D.* of, &c. of the other Part; Witnesseth that the said *A. B.* for and in Consideration of the Sum of, &c. to him in Hand paid by the said *C. D.* the Receipt whereof the said *A. B.* doth hereby confess and acknowledge, and for divers other good Causes and Considerations him thereunto in this behalf especially moving He the said *A. B.* hath granted, bargained and sold, aliened, released and confirmed, and by these Presents doth fully, freely and absolutely grant, &c. unto the said *C. D.* (in his actual Possession now being by Virtue of a Bargain and Sale to him thereof made for one whole Year, by Indenture bearing Date the Day next before the Day of the Date of these Presents, and by

by Force of the Statute for transferring of Uses into Possession) and to his Heirs and Assigns for ever, All that Messuage or Tenement commonly called or known by the Name of, &c. with the Rights, Members, and Appurtenances thereof, situate, lying and being in, &c. And all Houses, Edifices, Buildings, Orchards, Gardens, Lands, Meadows, Commons, Pastures, Feedings, Trees, Woods, Underwoods, Ways, Paths, Waters, Water-courses, Easements, Profits, Commodities, Advantages, Emoluments, and Hereditaments whatsoever, to the said Messuage or Tenement belonging, or in any wise appertaining, or which now are or formerly have been accepted, reputed, taken, known, used, occupied, or enjoyed to or with the same, or as Part, Parcel, or Member thereof, or of any part thereof, situate, lying and being in, &c. aforesaid. And also the Reversion and Reversions, Remainder and Remainders, Rents and Services,

## The Law concerning

of all and singular the said Premises above-mentioned, and of every Part and Parcel thereof, with the Appurtenances. And also all the Estate, Right, Title, Interest, Claim and Demand whatsoever, as well in Equity as in Law, of him the said *A. B.* of, in and to all and singular the said Premises above-mentioned, and of, in and to every Part and Parcel thereof, with the Appurtenances. And also all Deeds, Evidences and Writings, touching or concerning the said Premises only, or only any part thereof, together with true Copies of all other Deeds, Evidences, and Writings, which do concern the said Premises, or any part thereof, jointly with any other Lands or Tenements now in the Custody or Possession of him the said *A. B.* or which he can or may get or come by without Suit in Law, the same Copies to be made and written at the Request, Costs and Charges of the said *C. D.* his Heirs and Assigns. To have  
and

and to hold the said Messuage or Tenement, Lands, Hereditaments, and all and singular the Premises above-mentioned, and every Part and Parcel thereof, with the Appurtenances, unto the said C. D. his Heirs and Assigns, To the only proper Use and Behoof of the said C. D. his Heirs and Assigns for ever. And the said A. B. for himself, his Heirs and Assigns, doth covenant and grant to and with the said C. D. his Heirs and Assigns, That he the said A. B. now is the true, lawful and rightful Owner of all and singular the said Messuage, Lands, Tenements, Hereditaments, and Premises above-mentioned, and of every Part and Parcel thereof, with the Appurtenances. And also that he the said A. B. now is lawfully and rightfully seized in his own Right, of a good, sure, perfect, absolute and indefeasible Estate of Inheritance in Fee-simple, of and in all and singular the said Premises above-mentioned, with the Appurtenances, without any manner

ner of Condition, Mortgage, Limitation of Use and Uses, or other Matter, Cause or Thing, to alter, change, charge or determine the same. And also that the said *A. B.* now hath good Right, full Power, and lawful Authority, in his own Right to grant, bargain, sell and convey all and singular the said Messuage, Lands, Tenements, Hereditaments, and Premises above-mentioned, with the Appurtenances unto the said *C. D.* his Heirs and Assigns, to the only proper Use and Behoof of him the said *C. D.* his Heirs and Assigns for ever, according to the true intent and meaning of these Presents. And also that he the said *C. D.* his Heirs and Assigns shall and may at all times for ever hereafter peaceably and quietly have, hold, occupy, possess and enjoy all and singular the said Messuage, Lands, Tenements, Hereditaments, and Premises above-mentioned, with the Appurtenances, without the Let, Trouble, Hindrance, Molestation, Interruption, and Denial of him  
the

the said *A. B.* his Heirs or Assigns, and of all and every other Person or Persons whatsoever. And that freed and discharged, or otherwise well and truly and sufficiently saved and kept harmless and indemnified of and from all former and other Bargains, Sales, Gifts, Grants, Leases, Mortgages, Jointures, Dowers, Uses, Wills, Intails, Fines, Post-Fines, Issues, Amerciaments, Seizures, Bonds, Annuities, Writings obligatory, Statutes-Merchant and of the Staple, Recognizances, Extents, Judgments, Executions, Rents and Arrearages of Rent, and of and from all other Charges, Estates, Rights, Titles, Troubles, and Incumbrances whatsoever, had, made, committed, done, or suffered, or to be had, made, &c. by the said *A. B.* or any other Person or Persons whatsoever, claiming or to claim, by, from, or under him, them, or any of them. And farther, That he the said *A. B.* and his Heirs, and all and every other Person and Persons, and his and their

**The Laws concerning**

their Heirs, any thing having or claiming in the said Premises above-mentioned, or any Part thereof, by, from, or under him, shall and will from time to time, and at all times hereafter upon the reasonable Request, and at the Costs and Charges of the said C. D. his Heirs or Assigns, make, do and execute, or cause or procure to be made, &c. all and every such farther and other lawful and reasonable Act and Acts, Thing and Things, Devise and Devises, Conveyance and Conveyances, in the Law whatsoever, for the farther, better, and more perfect granting, conveying and assuring of all and singular the said Premises above-mentioned, with the Appurtenances, unto the said C. D. his Heirs and Assigns, to the only proper Use and Behoof of the said C. D. his Heirs and Assigns for ever, as by the said C. D. his Heirs or Assigns, or his or their Counsel learned in the Law, shall be reasonably devised, or advised and required. And lastly, It is covenanted,

ed, granted, concluded and agreed upon by and between the said Parties to these Presents, and the true meaning hereof also is, and it is hereby so declared, That all and every Fine and Fines, Recovery and Recoveries, Assurance and Assurances, Conveyance and Conveyances in the Law whatsoever already had, made, levied, suffered, executed, and acknowledged, or at any time hereafter to be had, made, &c. by or between the said Parties to these Presents, or either of them, or by or between them, or either of them, and any other Person or Persons whatsoever, of the said Premises above-mentioned, with the Appurtenances, or of any Part thereof, either alone by it self, or jointly with any other Lands, Tenements or Hereditaments, Shall be and enure, and shall be adjudged, esteemed, and taken to be and enure, as for and concerning all and singular the said Premises above-mentioned, with the Appurtenances, to and for the

2

only

# The Laws concerning

only proper Use and Behoof of the  
said C. D. his Heirs and Assigns  
for ever, according to the true in-  
tent and meaning of these Presents,  
and to and for none other Use, In-  
tent or Purpose whatsoever. In  
Witness, &c.

*A general Release.*

**K** NOW all Men by these Presents, That I *A. B.* of, &c. have remised, released, and for ever quit-claimed, and by these Presents do for me, my Heirs, Executors, and Administrators, remise, release, and for ever quit-claim unto *C. D.* of, &c. his Heirs, Executors and Administrators, all and all manner of Action and Actions, Cause and Causes of Action and Actions, Suits, Bills, Bonds, Writings, Obligations, Debts, Dues, Duties, Reckonings, Accounts, Sum and Sums of Money, Judgments, Executions, Extents, Quarrels, Controversies, Trespases, Damages, and Demands whatsoever, both at  
I Law

Law and in Equity, or otherwise howsoever, which against him the said C. D. I ever had, now have, or which I, my Heirs, Executors, and Administrators, shall or may have, claim, challenge or demand, for or by reason or means of any Act, Matter, Cause or Thing, from the beginning of the World, to the Day of the Date of these Presents. In Witness, &c.

A Fine is taken for a final Agreement or Conveyance upon Record, for the settling and securing of Lands, &c. acknowledged in the King's Court; and will bar the Heir in Tail, but not him that is in Remainder or Reversion. A Recovery is a Record of Lands, conveyed by way of better Assurance, and is a Bar to all that are in Remainder and Reversion, and also to the Issue in Tail. And sometimes a Recovery is a formal Act by Consent, used for cutting off an Estate-tail, &c. in Lands or Tenements, to the Intent, the Person suffering it,

*Indentures  
to lead  
Uses of  
Fines, &c.*

## The Law concerning

it, may sell, give or dispose of the same at his Pleasure.

Fines may be levied of all things being *in esse, tempore Finis*, and certainly express'd in the Writs; but they may not be levied of things incertain, nor of Lands restrain'd from Sale by Act of Parliament.

28. Ed. 4.

Lands bought of divers Persons by several Purchasers, may pass into one Fine, and then the Writ of Covenant must be brought by the Vendees against all the Vendors, and every Vendor warrant against him, and his Heirs only. And these joint Fines are frequently used when the Purchases are of small Value, to render the Expence the more easie.

If Lands lie in divers Counties, and there be not several Writs of Covenant for every County, this will be Error. *Dyer* 227. And as a fraudulent Deed or Conveyance may be set aside, so a Fine for Fraud may be avoided. *Plow.* 370.

If

If either of the Parties Cognizors die after the Cognizance or Concord, and before the King's Silver be entered; this will avoid the Fine, and it cannot be made good: But if the King's Silver be entered, and the Party die after this, the Fine shall not be avoided, but may be finished. *Co. Lit. 9. Dyer 89. Hob. 330.*

Where there is a precedent Agreement, as a Feoffment, &c. made between the Parties to a Fine, there the Fine shall not pass any thing, but only corroborate the Conveyance, and shall be guided by the precedent Agreement. *Co. 10. 96.* Covenants for declaring Uses of Fines are good, though made after the Fine levied. *Stat. 4 & 5. Anne.* And a Fine without Consideration, doth carry the Uses; *contra* in other Conveyances. *1 Leon. 188.*

A Fine is either with Proclamations, or without; That without Proclamations is termed a Fine at the Common Law; and that with Proclamations is adjudged a Fine accord-

## The Law concerning

according to the Statutes of 1 R. 3.  
4 H. 7. 32 H. 8. 3 E. These  
Fines are the best sort, and most  
used; and if there be Error in the  
Proclamations, yet the Fine shall  
be good at Common Law. Co.

2 Inst. 19. Almost any kind of Contract may  
be made and expressed by a Fine,  
as it may by a Deed; and Fines  
are divided into four kinds, viz.  
A Fine *sur Cognizance de Droit come  
ceo, &c.* A Fine *sur Done, Grant  
& Render*; A Fine, *sur Concessit*,  
A Fine *sur Cognizance de Droit tan-  
tum.*

A Fine *sur Cognizance de Droit  
come ceo, &c.* single, is the Principal  
and surest kind of Conveyance: It  
doth of its own Force, give present  
Possession (at least in Law) to the  
Cognizee; so that there is no oc-  
casion for any Writ, or other means  
for Execution thereof, but the Cog-  
nizee may enter without it, and en-  
joy to such Uses as are declared in  
the Deed, to lead the Uses thereof.  
Benl. Rep. 134.

A Fine, *Sur Done, Grant & Render*, is that which is called a double Fine; whereby the Cognizee, after a Release and Warranty made to him, by the Cognizor of the Lands contain'd therein, doth grant and render back to the Cognizor the Lands, &c. and many times Remainders are limited to Persons that are Strangers, and not named in the Writ of Covenant. This Writ is partly executed, and partly executory. 5 Co. 38.

A Fine *Sur Concessit*, is where the Cognizor is seiz'd of the Lands contained therein, and the Cognizee hath no Freehold in it, but it passeth by the Fine. This Fine is Executory, so that the Cognizees must enter or have a Writ of *Habeas facias seisinam*, for obtaining of the Possession.

A Fine *Sur Cognizance de Droit tantum*, is much of the Nature of a Fine *Sur Concessit*; and it is commonly used to pass a Reversion.

## The Laws concerning

Infants such as are under 21 Years of Age, ought to have a Special Care how they levy Fines; for they must be reversed again during their Infancy, or they will be good; and the Court is to see them at such Reversal, to judge of their Age. 50 E. 3.

A married Woman under Age ought to be likewise very careful that she levy not a Fine of her own Lands; for she cannot reverse it during her Husband's Life, nor after his Death, though she be then of full Age. *Ass. pl. 53.*

She should also beware how she with her Husband levy a Fine of her Jointure, lest she thereby lose her Thirds, if the Jointure were well settled before Marriage. *Dyer 359.*

If a married Woman, without her Husband, levy a Fine of her Lands, wherein she hath a Fee-simple, it will be a Bar against her and her Heirs, unless her Husband avoided it by Entry, or otherwise, during her Life. And if he be Tenant

nant by the Curtesie, he may reverse it after her Death. 17 E. 3.

17 Aff. 17.

And as a Wife is not to levy a Fine without her Husband, so a Husband ought not to levy a Fine of his Wife's Lands without her; if he does, she and her Heirs may avoid it after his Death. 42 E. 3. 32 H. 8.

A Feme Covert is to be examined in Private when she passes a Fine, or suffers a Common Recovery, that her Consent may be the better discovered; without which a Fine cannot be levied. 18 E. 1.

If Lands assured to a Woman for Jointure, in Dower, or in Tail, be by her granted for a greater Estate than for her Life, her Estate is presently forfeited. Plow. 459.

A Fine levied by Tenant in Tail is a Bar to him and his Issues, but not to those in Reversion or Remainder, who may enter within five Years after their Titles accrued. 9 Co. 140.

Any

## The Laws concerning

Any one that hath an Estate in Possession or Reversion, which will be barred by the Fine when levied, may make a Claim or Entry within five Years, to prevent the Bar of the Fine. And by Authority also another Man may make a Claim, Entry, &c. for him that hath Right. *Mo. 457.* Action must be brought within one Year after Entry. *Stat. 4 & 5. Anne.*

A Stranger having no Right entering upon an Estate, and putting the Owner out of Possession, may levy a Fine with Proclamations to bar him ; and if the Owner do not make his Claim within five Years, he is barred for ever. *Co. 3. 79.*

Privies in Blood, such as the Cognizor's Heirs, who make their Claim by the same Title as their Ancestor that passed the Fine, are barred presently thereby ; but those as are neither Parties nor Privies, who are by the Law called Strangers to Fines, have five Years time allow'd them after Proclamation, to make an Entry and claim their Right. *Br. Fines*

Infants have five Years after they accomplish their full Age, (if in the Womb at the time of the Fine pass'd) Madmen and Lunaticks, after they are cured of their Maladies; Feme Coverts after the Death of their Husbands; Prisoners, (Strangers to the Fine,) after their Enlargement; Strangers out of the Realm, after their Return; but if they die under these Impediments, their Heirs are not limited. *Plowd.* 367, 375, &c. *Co. Inst.* 319.

Five Years are also allowed after a Remainder falls; after Forfeiture of Tenant for Life, &c. to make Claim to the Estate: But a Fine must be of Lands in Possession, or the five Years will be no Bar; and a Fine and Non-claim shall not bar an Estate that is not turned to a Right, neither shall it impede a Mortgage. *1 Vent.* 82.

If a Mortgagee suffer a Recovery, *Recoveries.* this will not bind the Mortgagor; but if the Mortgagor be a Party to the Recovery, the Recovery will be good. *2 Cro.* 592.

## The Laws concerning

A Recovery suffered by Tenant in Tail after he hath made a Lease of the Land, or entred into a Statute, will make the Lease or Charge, that before was voidable, good against the Issue in Tail, and him in Remainder or Reversion; and the Recoveror shall hold it charged, and subject to the Lease made by Tenant in Tail. *1 Co. 25.*

Recoveries are either with single, double, or treble Vouchers; a Recovery with single Voucher is to bar the Tenant and his Heirs, of such Estate-tail as is in him, and destroy the Estates which others have in Reversion or Remainder depending upon the same. A Recovery, with a double Voucher, bars the first Vouchee and his Heirs, of all the Estate, as at any time was in him or his Ancestors, and all Rights, Reversions, &c. and it is a perpetual Bar of such Estate whereof the Tenant was seised in Reversion or Remainder expectant on the same. The Recovery with treble Voucher makes a perpetual Bar  
of

of the Estates of the Tenant; Estates of Inheritance in the first or second Vouchee, Reversions thereupon depending, Leases, Charges, Incumbrances. &c.

But a Recovery with single Voucher cannot be a Bar to an Estate-tail, to which he that suffers the Recovery has only a Right at the Time of the Recovery suffered. 3 Cro. 826. And a Stranger that hath Right to the Land, at the time of the Recovery suffered, is not barred thereby; or by Non-claim, &c. as in case of a Fine. 3 Co. 5.

If Tenant for Life, and he in Remainder in Tail suffer a Common Recovery, and both vouch the common Vouchee; this is no good Recovery to bar the Issue in Tail; for he in Remainder was not Tenant to the *Præcipe*, being not in Possession. But if there be Tenant for Life, the Remainder in Tail, the Reversion or Remainder in Fee, and the Tenant for Life is impleaded by Agreement, and he vouch the Tenant in Tail, and he vouch over

## The Laws concerning

the Common Recovery; this will bar the Reversion or Remainder in Fee, although he in Reversion or Remainder did never assent to the Recovery. 1 Co.

So if the Tenant for Life surrender to him in Remainder in Tail, he may suffer a Recovery, and bar the Estate-tail. Co. Lit. 362. But no common Recovery is good where the Vouchee being within Age, appears by Attorney, and not by Guardian; for after his Death they in Remainder may bring Error. Cro. El. 739.

A Recovery has been held good where a Stranger that had nothing in the Land was made Tenant to the *Præcipe*, with the Tenant in Tail; for the Recompence in Value shall go to him that lost the Estate, and being a common Assurance it shall be favourably expounded. 1 Vent. 358.

If Lands be Settled or Conveyed by a Husband, or any of his Ancestors, to the Wife for her Life, or to her and her Husband, and  
their

their Issue in Tail, for the Jointure of the Wife, and after the Husband's Death, the Wife alone, or she and an after Husband shall suffer a Common Recovery of the Land; this shall be esteem'd fraudulent and void: But the Heir in Tail, or he and his Mother together, may suffer a Recovery, and it will be good. *11 H. 7.*

Tenants in Tail after Possibility of Issue extinct, Tenants by the Curtesie, or for Life, suffering a Recovery by Fraud, without the Assent, and to the Prejudice of him in Remainder or Reversion, such Recoveries are not only void, but are Forfeitures of the Estates of such Tenants for Life, &c. *Shep. Touch. 43.*

As Fines and Recoveries are a Bar, and dock the Estates aforementioned; so by Indentures to lead the Uses thereof, new Estates and Intails are limited and created, subject to farther Fines and Recoveries.

## The Lawes concerning

A Fine from a Man and his  
Wife.

Middl' ff. *Præcipe Will' B. Ar' & Katharina Ux. ejus quod fuste, &c. ten' Thomæ L. Ar' Con', &c. de Uno Messuagio quadraginta Acr' Terræ quadragint' acr' prati & Vigint' acr' pasturæ cum pertin' in Paroch' de A. Et nisi, &c.*

**E**T est concordia talis scil't quod præd' Willielmus & Katharina recogn' Ten'ta præd' cum pertin' esse jus ipsius Thomæ L. Ut ill' quæ idem Thomas habet de dono præd' Will' & Katharine Et ill' remiser' & quiet' clam' de se & Hæred' suis præfat' Thomæ & Hæred' suis imperpetuum Et præterea iidem Willielmus & Katharina concesser' pro se & Hered' ipsius Will' quod ipsi Warrant' præfat' Thomæ & Hæred' suis Tenta præd' cum pertin' contra ipsos Willielmum & Katerinam & Hæred' ipsius

ipſius Willielmi imperpetuum. Et  
pro hac, &c.

A *Præcipe* and Concord of a  
double Fine.

Middl' ſſ. *Præcipe* A. B. *Gent. quod*  
*Juſte*, &c. *ten'* C. D. *Con'*,  
&c. *de Manerio de E. cum*  
*pertin'*, &c. *Et niſi*, &c.

**E**T eſt concordia talis ſcil't quod  
præd' A. recogn' Manerium  
præd' cum pertin' eſſe juſ ipſius C.  
ut ill' quæ idem C. habet de Dono  
præd' A. Et ill' remiſit & quiet'  
clam' de ipſo A. & Hæredibus ſuis  
præd' C. & Hæredibus ſuis imperpe-  
tuum. Et preterea idem A. conceſſit  
pro ſe & Hered' ſuis quod ipſi War-  
rant' Manerium præd' cum pertin'  
præfat' C. & Hæred' ſuis contra ip-  
ſum & Hered' ſuos imperpetuum.  
Et pro hac recogn' remiſſion' quiet'  
clam' Warrant' Fine & concordia  
idem C. conceſſit præd' A. præd'  
Manerium cum pertin' Et ill' ei red-

## The Laws concerning

didit, in eadem Cur' Habend' & tenend' eidem *A.* & Hæredibus quos idem *A.* procreaverit de corpore *F.* nunc Uxoris ejus Tenend' de Capitalibus Dominis Feodi ill' per Servitia quæ ad præd' Maner' pertin' & si contingerit quod idem *A.* Obiret sine Hæred' per ipsum de corpore ipsius *F.* procreat' Tunc post decessum ipsius *A.* præd' Manerium cum pertin' integre Reman' præd' *F.* Tenend', &c. tota vita ipsius *F.* Et post Decessum ipsius *F.* præd' Manerium cum pertin' integre Reman' rectis Hæred' præd' *C.* tenend', &c. Et pro hac, &c.

### *An Indenture to lead the Uses of a Fine of Lands, &c.*

**T**HIS Indenture made, &c. between Sir *A. B.* of, &c. Baronet, and Dame *E.* his Wife, of the one Part, and *C. D.* of, &c. Esq; of the other Part. Witnesseth That the said Sir *A. B.* and Dame *E.* his Wife, for the settling and assuring  
of

of the Manors, Lands, Tenements, and Hereditaments herein after-mentioned, to the several Uses, Intents, and Purposes herein after declared, limited, and appointed; and for divers other good Causes and Considerations, He the said Sir A. B. Hath covenanted and granted, and by these Presents doth, for himself, his Heirs, and Assigns, covenant and grant to and with the said C. D. his Heirs and Assigns. And the said Dame E. Wife of the said Sir A. B. doth hereby consent and agree, That they the said Sir A. B. and Dame E. his Wife shall and will, before the End of *Trinity* Term next ensuing, acknowledge and levy, in due Form of Law, before his Majesty's Justices of the Court of Common Pleas at *Westminster*, unto the said C. D. his Heirs and Assigns, one Fine *Sur Conuzance de Droit come ceo*, &c. with Proclamations to be thereupon had according to the Form of the Statute in that Case made and provided, of All that the Manor of, &c. and of

## The Laws concerning

all that Messuage, Farm, &c. scituate, &c. And also the Reversion and Reversions, Remainder and Remainders, Rents, and Services of all and singular the said Manor and Premises abovementioned, and every Part and Parcel thereof, with the Appurtenances, by the Names of thirty Messuages, ten Cottages, two Mills, five hundred Acres of Land, four hundred Acres of Meadow, five hundred Acres of Pasture, forty Acres of Wood, and 40 *l.* Rent and Common of Pasture, with the Appurtenances in, &c. aforesaid. And it is hereby agreed, by and between the said Parties to these Presents, and the true Meaning hereof also is, and it is hereby so declared, That the said Fine, so as aforesaid, or in any other Manner, to be levied of the said Manors and Premises, or any Part thereof; and also all and every other Fine and Fines already had and levied, or to be had and levied of the same Premises, or any Part thereof, either alone by its self, or jointly with a-  
ny

ny other Manors, Lands, or Tenements, by or between the said Parties to these Presents, or by or between them, or any, or either of them, and any other Person or Persons, As for and concerning the said Manor and Premisses abovementioned, with the Appurtenances, Shall be and enure, and shall be adjudged, esteemed, and taken to be and enure, And the said C. D. and his Heirs, and all and every other Person and Persons, and his and their Heirs now standing, and being seized, or which, at the perfecting of the said Fine, shall stand or be seized of the said Manor and Premisses, or any Part thereof, shall, at all Times hereafter, stand and be seized thereof, and of every Part and Parcel thereof, with the Appurtnances; to and for the several Uses, Intents and Purposes herein after limited, expresse, and declared; (that is to say) As for and concerning the said Manor of, &c. with its Rights, Members, and Appurtenances, and all and singular the Messuages, Farms,

## The Lawes concerning

Farms, Cottages, Lands, Tenements, Commons, Wastes, Waste-Grounds, Moors, Marshes, Mines of Coal, &c. Profits, and Perquisites of Courts, Royalties, Rents, and Hereditaments whatsoever, to the same Manor or Lordship belonging, or in any wise appertaining, or accepted, reputed or taken as Part, Parcel, or Member thereof; To the Use and Behoof of the said Sir *A. B.* and Dame *E.* for and during the Term of their natural Lives, and the Life of the longest Liver of them, without Impeachment of or for any Manner of Waste, And with full Power, Liberty, and Authority for the said Sir *A. B.* alone, during his Life, and after his Death, for the said Dame *E.* alone, during her Life, to make and grant any Lease or Leases, Grant or Grants, by Copy of Court-Roll, for one, two, or three Life or Lives, in Possession or Reversion, of any Lands or Tenements, Parcel of the said Manor, which have been usually so granted. Provided, That there shall be no more than three

Lives at any one Time in being on the said Premisses, or any Part thereof; and so as the usual Rents, Heriots and Services, or more, shall be reserved on such Leases and Copies respectively. And from and after the Decease of the said Sir A. B. and Dame E. his Wife, and the Survivor of them, Then to the Use and Behoof of the right Heirs of the said Sir A. B. for ever. And as for and concerning all and singular, &c. whereof the said Fine shall be so levied, and whereof no Use is herein before declared, To the only proper Use and Behoof of the said Sir A. B. his Heirs and Assigns for ever; and to and for none other Use, Intent or Purpose whatsoever. In witness, &c.

*A Deed to lead the Uses of a  
Fine and Recovery, on a  
Purchase.*

**T**HIS Indenture Tripartite made,  
*℥c.* between *A. B.* of, *℥c.*  
 and *M.* his Wife, *C. D.* of, *℥c.* and  
*E.* his Wife, of the first Part, *E. F.*  
 and *G. H.* both of, *℥c.* of the se-  
 cond Part, and *J. K.* of, *℥c.* and  
*L. M.* of, *℥c.* of the third Part,  
 Witnesseth, That for and in Consi-  
 deration of the Sum of, *℥c.* to the  
 said *A. B.* and *M.* his Wife, and  
*C. D.* and *E.* his Wife, in Hand  
 paid by the said *J. K.* and *L. M.*  
 the Receipt whereof they do here-  
 by acknowledge, and in Considera-  
 tion also of 5 *s.* of, *℥c.* to the said *A.*  
*B.* and *M.* his Wife, and *C. D.* and  
*E.* his Wife, in Hand paid by the said  
*E. F.* and *G. H.* the Receipt where-  
 of they do hereby also acknowledge.  
 And the said *A. B.* and *C. D.* for  
 the barring, docking, cutting off,  
 and

and destroying of all Estates-Tail and Remainders over now in being, in and upon the Messuage, Lands, Tenements, and Hereditaments herein after mentioned. And for conveying and assuring the same Premises to the only proper Use and Behoof of the said J. K. and L. M. and their Heirs, They the said A. B. and C. D. Have, and each of them hath covenanted and granted, and by these Presents Do, and each of them doth covenant and grant, to and with the said E. F. and G. H. their Heirs and Assigns, That they the said A. B. and M. his Wife, and C. D. and E. his Wife, shall and will on this Side, and before the End of Easter Term next coming, and before the King's Majesty's Justices of his Court of Common Pleas at *Westminster*, in due Form of Law, levy and acknowledge unto the said E. F. and G. H. and their Heirs, or to the Heirs of one of them, one Fine Sur *Conuzance de Droit come ceo*, &c. with Proclamations to be thereupon had according

## The Laws concerning

ing to the Form of the Statute in that Case made and provided, of All that their Messuage or Tenement, &c. in the Tenure of, &c. with all and singular its Appurtenances; and also of the Reversion and Reversions, Remainder and Remainders, Rents and Services of the said Premises abovementioned, and of every Part and Parcel thereof with the Appurtenances, by such Name and Names, Quantity and Number of Messuages, Acres, and Things; and in such Manner and Form as by the said *E. F.* and *G. H.* or their Counsel, learned in the Law, shall be reasonably devised or advised, and required; Which said Fine so to be had and levied in Manner aforesaid, and all and every other Fine and Fines already had, or at any Time hereafter to be had, levied, sued or prosecuted of the said Premises, or any Part thereof, by it self, or jointly with any other Lands or Tenements, by or between the said Parties to these Presents, or between them, or any, or either of them, and any

ny other Person or Persons, before the End of the said next *Easter* Term, As for and concerning all and singular the said Premisses abovementioned, with the Appurtenances, Shall be and enure ; and shall be adjudgd, esteem'd, and taken to be and enure, to and for the only proper Use and Behoof of the said *E. F.* and *G. H.* their Heirs and Assigns, To the Intent and Purpose only that they may become perfect Tenants of the Freehold of the said Premisses. And to this further End, Intent, and Purpose, That they the said *E. F.* and *G. H.* shall and will on this Side, and before the End of, &c. Term next, permit and suffer the said *J. K.* and *L. M.* to sue and prosecute one or more Writ or Writs of Entry *Sur Disseisin en le Post* returnable before the King's Majesty's Justices of the said Court of Common Pleas, against them the said *E. F.* and *G. H.* of all and singular the said Premisses abovementioned, and of every Part and Parcel thereof, with  
the

## The Laws concerning

the Appurtenances, by such Name and Names, Quantity and Number of Messuages, Acres, and Things, and in such Sort, Manner, and Form as by the said J. K. and L. M. shall be thought fit and convenient, Unto and upon which said Writ of Entry so to be brought, the said E. F. and G. H. shall appear, and vouch to Warranty the said A. B. and M. his Wife, and C. D. and E. his Wife, who shall likewise appear either in their several Persons, or by their Attorney lawfully authorized, and enter into the said Warranty, and after their Entry into the Warranty shall vouch over the common Vouchee, who shall likewise enter into the said Warranty and Imparl, and afterwards make Default. To the end one perfect Common Recovery, shall and may, of all and singular the said Premises above-mentioned, be had, prosecuted and executed in all things according to the usual Order and Form of Common Recoveries for assurance of Lands,

Lands, Tenements, and Hereditaments, in such Cases used and accustomed. And the same Recovery shall also in due form of Law be executed by one Writ of *Habere facias seisinam* accordingly. And it is covenanted, granted, concluded and agreed, by and between the said Parties to these Presents, and the true meaning also is, and it is hereby so declared, That the said Recovery, so or in any other manner to be had and suffered, and all and every other Recovery and Recoveries to be had, suffered and executed of the said Premises, or any Part thereof, by or between the said Parties to these Presents, or by or between them, or any or either of them, and any other Person and Persons, on this side and before the end of, &c. Term next coming, and the full Force and Execution of them, and every of them, and all other Assurance and Assurances of the said Premises, or any Part thereof, had or to be had and made between,

## The Laws concerning

tween the said Parties, or any of them shall be and enure, and shall be adjudged, esteem'd and taken to be, and enure to and for the only proper Use and Behoof of the said J. K. and L. M. their Heirs and Assigns for ever, and to and for none other Use, Intent or Purpose whatsoever. And each of them the said A. B. and C. D. for himself, severally and apart, and not jointly, and for his several and respective Heirs and Assigns doth severally and apart, and not jointly, covenant and grant to and with the said J. K. and L. M. their Heirs and Assigns, That they the said A. B. and M. his Wife, and C. D. and E. his Wife are, or some or one of them now is, lawfully and rightfully seized of a good, sure, perfect and indefeasible Estate of Inheritance in Fee-simple, or Fee-tail, of and in the said Premises above-mentioned, with the Appurtenances, in their, or some or one of their own Right or Rights, without any Condition,  
Mort-

Mortgage, Limitation of Use or Uses, or other Matter or Thing to alter, charge, change and determine the same. And also, That they the said J. K. and L. M. their Heirs and Assigns, shall and may from time to time, and at all times hereafter, for ever peaceably and quietly enter into, have, hold, occupy, possess and enjoy all and singular the said Premises above-mentioned, and every Part and Parcel thereof, with the Appurtenances, without the Let, Trouble, Hindrance, Molestation, Interruption and Denial of them the said A. B. and M. his Wife, and C. D. and E. his Wife, their Heirs and Assigns, and of all and every other Person and Persons whatsoever, claiming or to claim, by, from or under them, or any or either of them, or by, from or under, &c. deceased. And further, That they the said A. B. and M. his Wife, and C. D. and E. his Wife, and their Heirs, and all and every other Person and Per-

## The Lawes concerning

Persons, and his and their Heirs, any Thing having or claiming in the said Premisses abovementioned, or any Part thereof, by, from, or under them, or any or either of them, or under the said, &c. shall and will at any Times or Times hereafter, upon the reasonable Request, and at the Costs and Charges of the said J. K. and L. M. their Heirs and Assigns, make, do, and execute, or cause or procure to be made, &c. All and every such further and other lawful and reasonable Grants, Acts, and Assurances in the Law whatsoever, for the further, better, and more perfect granting, conveying, and assuring of all and singular the said Premisses abovementioned, with the Appurtenances, unto the said J. K. and L. M. their Heirs and Assigns, to the only proper Use and Behoof of the said J. K. and L. M. their Heirs and Assigns for ever, according to the true Intent and Meaning of these Presents, as by the said J. K. and L. M. their

4

Heirs

Heirs or Assigns, or their, or either of their Counsel, learned in the Law, shall be reasonably devised, or advised, and required. In Witness, &c.

A Deed of Exchange is a mutual *Exchanges.* Grant of equal Interest, in Lands or Tenements held in Fee-simple, Fee-tail, for Life or Years, the one in Exchange for the other. And in this Deed there is a double Grant, each granting that which is his to the other. *Co. Lit. 501.*

In Exchanges there must be two Grants, and each contain the word Exchange; or else it will work only as a Deed of Grant, and if it be for Life, Livery and Seisin must be had; both the Estates must be equal; but they need not be of one Nature, nor of equal Value, so as they are made of Lands or Tenements, for Lands may be exchanged for Rent, Common, or other Inheritance which concern Lands or Tenements, or Spiritual Things for Temporal. *Perk. Sect. 265.*

If

## The Laws concerning

If a Fee-simple Estate be exchanged for a Fee-tail, or a Tail general for Special Tail, &c. these Estates being not equal, the Exchange is void. An Exchange made between Tenant in Tail and another is not void but voidable, for it is good against him during his Life: And an Exchange made between a Man *non sane Memoriae*, and another, is not void but voidable only; it is good against him, but his Heir may avoid or affirm it at his Election.

*Bro. Exch. 9.*

If an Infant exchange Lands, and after at his full Age occupy the Lands, hereby the Exchange is made good: So if Tenant in Tail exchange his entailed Lands with another, and after his Death the Issue occupy the Lands taken in exchange by his Ancestors, hereby the Exchange is made good for the Life of the Issue in Tail. *Co. Lit.*

An Exchange may be made to take effect *in Futuro* as well as *in Praesenti*: But in all Exchanges there must

must be Execution by Entry in the Life of the Parties ; for if one of them die before the Exchange be executed by Entry, the Exchange is void. And if an Exchange be made of three Acres of Land for three Acres, and after one of the Parties is put out of one of the Acres by the Entry of a Stranger ; in this case he may enter upon the whole three Acres he had given in Exchange, and by that means avoid the whole Exchange. 4 Co. 121.

For in every Exchange is implied a Condition of Re-entry and a Warranty, Voucher and Recompence of the other Land that was given in Exchange ; and an Exchangor may re-enter upon an Assignee ; that is, a Condition to give a Re-entry upon all the Land given in Exchange, if he be ejected of all or any part of the Land taken in Exchange, and a Warranty to enable him to vouch, and to recover over in Value so much of his own Land again.

F

An

*An Exchange of a Messuage,  
&c. held for a Term of Years.*

**T**HIS Indenture made, &c.  
Between A. B. of, &c. of  
the one Part, and C. D. of, &c. of  
the other Part; Witnesseth, That  
the said A. B. hath given and grant-  
ed, and by these Presents doth give  
and grant unto the said C. D. All  
that Messuage or Tenement, &c.  
situate, &c. now in the Possession  
of, &c. To have and to hold the  
said Messuage or Tenement and Pre-  
misses above-mentioned, unto the  
said C. D. his Executors, Admini-  
strators and Assigns, for and during  
the Term of 99 Years, next and  
immediately ensuing, and fully  
to be compleat and ended, if the  
said A. B. L. B. &c. or any or ei-  
ther of them shall happen so long  
to live, In Exchange for one Mes-  
suage, &c. lying, &c. in the Pos-  
session of, &c. For which Consi-  
deration the said C. D. hath given  
and granted, and by these Presents  
doth

doth give and grant unto the said *A. B.* the said Messuage, &c. last above-mentioned, with the Appurtenances. To have and to hold the said Messuage or Tenement, and Premises last above-mentioned, with the Appurtenances, unto the said *A. B.* his Executors, Administrators and Assigns, for and during the Term of 99 Years next immediately ensuing and following, fully to be compleat and ended; if he the said *A. B.* &c. or any or either of them shall happen so long to live, In Exchange of and for the said Messuage or Tenement and Premises first above-mentioned. And the said *A. B.* for himself, his Executors and Administrators doth covenant and grant to and with the said *C. D.* his Executors, and Administrators, That he the said *C. D.* his Executors, Administrators and Assigns shall and may from time to time, and at all times during the said Term hereby granted, peaceably and quietly have, hold, occupy, possess and enjoy the said

## The Laws concerning

Messuage or Tenement, and Premises first above-mentioned, without the Let, Trouble, Hindrance, Molestation, Interruption or Denial of him the said *A. B.* his Executors, Administrators and Assigns, and every of them, and of all and every other Person and Persons whatsoever, claiming in, by, from or under him, them, or any of them. And the said *C. D.* for himself, his Executors and Administrators doth covenant and grant to and with the said *A. B.* his Executors and Administrators, that he the said *A. B.* his Executors, Administrators and Assigns shall and may from time to time, and at all Times during the said Term hereby granted, peaceably and quietly have, hold, occupy, possess and enjoy the said Messuage or Tenement, and Premises last above-mentioned, to be situate, &c. without the Let, Trouble, Hindrance, Molestation Interruption or Denial of him the said *C. D.* his Executors, Administrators and Assigns,

## Purchases of Lands.

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signs, and every of them, and of all and every other Person and Persons whatsoever, claiming in, by, from or under him, them, or any of them. In Witness, &c.

### *An Exchange of one Parcel of Lands for another in Fee.*

**T**HIS Indenture made, &c. Between A. B. of, &c. Gent. of the one Part; and C. D. of, &c. of the other Part; Witnesseth, That the said A. B. hath given, granted and confirmed, and by these Presents doth fully, freely and absolutely give, grant and confirm unto the said C. D. All that Close of Meadow-Ground, &c. situate, &c. bounded, &c. To have and to hold the said Close of Meadow-Ground and Premises hereby given and granted, or mentioned and intended to be hereby given and granted, and every Part and Parcel thereof, with the Appurtenances, unto the said

## The Lawes concerning

C. D. his Heirs and Assigns for ever, In Exchange for the Close of Pasture-Ground hereafter in these Presents mentioned to be given and granted in Exchange by the said C. D. And this Indenture further Witnesseth, That the said C. D. for the Considerations aforesaid hath given, granted and confirmed, and by these Presents doth fully, freely and absolutely give, grant and confirm unto the said A. B. All that Close of Pasture-Ground called, &c. containing, &c. To have and to hold the said Close of Pasture-Ground, and Premises above-mentioned to be given and granted by the said C. D. with the Appurtenances, unto the said A. B. his Heirs and Assigns for ever, In Exchange for the Close of Meadow before mentioned to be given and granted in Exchange by the said A. B. And the said A. B. for himself, his Heirs and Assigns doth covenant, promise and grant to and with the said C. D. his Heirs and Assigns by these Presents, that he  
the

the said C. D. his Heirs and Assigns, shall or lawfully may from time to time, and at all times hereafter, for ever peaceably and quietly enter into, have, hold and enjoy the said Close of Meadow-Ground, and Premises before mentioned, or intended to be hereby given and granted by the said A. B. with the Appurtenances, without any Let, Interruption, Disturbance or Incumbrance, of or by him the said A. B. his Heirs or Assigns, or of or by any other Person or Persons whatsoever, claiming or to claim from, by or under him, them, or any of them. (Here add the like Covenant from C. D. to A. B. peaceably to enjoy the Close of Pasture, and you may likewise insert a *Proviso*, That if either of the Parties are ejected out of Possession, they may enter on their former Lands, and the Exchange to be void.) In Witness, &c.

*Surrender.*

A Surrender is the yielding or delivering up of Lands or Tenements, and the Estate a Man hath therein to another.

The Person making the Surrender is to have an Estate in Possession of the Thing surrendred, at the time of the Surrender made, and not barely a Right; the Surrender is to be made to him that hath the next immediate Estate in Remainder or Reversion: The Surrendree to have a higher and greater Estate in the Premises surrendred than the Surrenderor, so that the Estate of the Surrenderor may be drown'd therein.

Then there is a Surrender in Law, or implied by Consequence of Law: As if Lessee for Life or Years take a new Lease of the same thing contained in the former Lease, this is adjudg'd a Surrender in Law of the first Lease; and this Rule is said to hold good although the second Lease be for a less time than the first.

*Plowd. 194.*

But

## Purchases of Lands.

But if Lessee for Life make a Lease for Years, rendring Rent, and after surrender his Estate, though the Primitive Estate for Life be yielded up, yet the derivative Estate for Years shall continue.

One that hath a Rent in Fee, or for Life or Years, issuing out of another Man's Manor, or other Lands, may surrender it; but a Person that is Tenant in Tail cannot surrender it. *Perk. Sect. 585.* A Surrender may not be made of Estates in Fee-simple, or Fee-tail, nor of Titles only of Estates for Life or Years, neither may it be made of part of an Estate for Life or Years.

A Surrender cannot be made of one Term for Years to another who has only a Term, because one Term cannot drown in another. In cases of Surrender, the actual Entry of the Surrendree into the Lands is not necessary; and to the passing an Estate for Life by the Surrender, there needs no Livery of Seisin.

## The Law concerning

If a Woman being Tenant in Dower, take a Husband who surrenders the Lands which he holdeth for her Life, and in her Right; after his Death, she may enter, though she had join'd in the Surrender, and notwithstanding that he to whom the Surrender was made, died seised of the Land in Fee, and his Heir be in by Descent. *Perk. Sect. 112.*

### *A Deed of Surrender of Lands.*

**T**O all to whom these Presents shall come *A. B. of, &c.* sends greeting. Whereas the said *A. B.* by Virtue of an Indenture of Lease bearing Date, *&c.* is possessed of, and interested in one Messuage or Tenement *&c.* situate, *&c.* for the Remainder of a certain Term of 99 Years determinable on the Deaths of him the said *A. B. E.* his Wife, *&c.* the Reversion whereof doth belong to *C. D. of, &c.*

*Ec.* Esq. Now know ye that the said *A. B.* for and in Consideration of the Sum of, *Ec.* to him in Hand paid by the said *C. D.* the Receipt whereof the said *A. B.* doth hereby confess and acknowledge, He the said *A. B.* hath surrendred and yielded up, and by these Presents doth surrender and yield up unto the said *C. D.* his Heirs and Assigns for ever, the said Messuage or Tenement, and Premisses above-mentioned, with the Appurtenances; And all the Right, Title, Interest, Claim and Demand whatsoever, of him the said *A. B.* of, in and to the same, together with the said Indenture of Lease. In Witness, *Ec.*

An Assignment is the transferring or setting over of a Right that a Man has in any thing to another. And there is an Assignee in Deed, and an Assignee in Law; he in Deed is such a one to whom a Lease, Estate, or Interest is assigned; and Assignee in Law is such whom

## The Laws concerning

whom the Law so maketh without any Appointment ; as an Executor is an Assignee in Law. *Dyer 6.*

If Lessee for Years assign over his Term, and die, his Executors shall not be charged for Rent due after his Death. And if the Executors or Administrators of a Lessee for Years assign over their Interests, an Action of Debt will not lie against them for Rent ; but the Lessor must have Notice of the Assignment, and consent to it, *Noy. 71.*

If a Lessee for Years make an Assignment of his Term, the Lessor may charge which of them he will ; but if he accept the Rent from the Assignee, knowing of the Assignment, he hath determined his Election, and cannot afterwards bring an Action of Debt against the Lessee, for Rent due after the Assignment. *Co. 3. Rep. 24.*

An Assignee shall always be intended, he that hath the whole Estate of the Assignor, that is assignable ; and if there be an Assignee

signee in Deed, an Assignee in Law will not be allowed. *Noy.*

*An Assignment of a Lease.*

**T**HIS Indenture made, &c.  
Between A. B. of, &c. of  
the one Part; and C. D. of, &c.  
of the other Part. Whereas T. B.  
of, &c. in and by his Indenture of  
Lease bearing Date, &c. for the  
Considerations therein mentioned,  
did demise, grant, and to Farm  
let unto the said A. B. All that  
Messuage or Tenement, &c. situate,  
&c. To hold unto the said A. B.  
his Executors, Administrators and  
Assigns for and during the Term of  
21 Years thence next and imme-  
diately ensuing and following, and  
fully to be compleat and ended,  
yielding and paying unto the said  
T. B. his Heirs and Assigns during  
the said Term, the yearly Rent,  
or Sum of, &c. at and upon, &c.  
and under divers Covenants, and  
Agreements in the said recited In-  
denture

## The Lawes concerning

denture of Lease contained, as in and by the said Indenture may more fully appear. Now this Indenture Witnesseeth, That the said *A. B.* for and in Consideration of the Sum of, &c. to him in Hand paid by the said *C. D.* the Receipt whereof is hereby acknowledged, he the said *A. B.* hath bargained and sold, assigned and set over, and by these Presents doth grant, bargain, &c. unto the said *C. D.* All and singular the said Messuage or Tenement, and Premisses above-mentioned, with the Appurtenances, and also all the Estate, Right, Title, Interest, Term of Years, Claim and Demand whatsoever of him the said *A. B.* of, in and to the said Premisses above-mentioned, and of, in and to every Part and Parcel thereof, with the Appurtenances, together with the said recited Indenture of Lease. To have and to hold the Messuage or Tenement, and Premisses above mentioned, and every Part and Parcel thereof, with the Appurtenances,  
unto

## Purchases of Lands.

III

unto the said C. D. his Executors, Administrators and Assigns, for and during all the Rest and Residue of the said Term of 21 Years above recited, which is yet to come and unexpired, Under the said yearly Rent of, &c. payable to the said T. B. his Heirs and Assigns, and by and under all and every the Covenants, Conditions and Agreements in the said recited Indenture of Lease mentioned and contained, which on the part and behalf of the said A. B. his Executors and Administrators before the making of this present Assignment should and ought to have been paid, observ'd and perform'd. And the said A. B. for himself, his Executors and Administrators doth covenant and grant to and with the said C. D. his Executors, Administrators and Assigns, that the said Lease and Term of 21 Years hereby assigned are still in Being, and subsisting, not surrendered, discharged, or otherwise avoided. And also that he the said C. D. his Executors, Ad-

## The Laws concerning

Administrators and Assigns shall and may, by and under the Rents, Covenants and Conditions in the said recited Lease, peaceably and quietly enter into, have, hold, occupy, possess and enjoy all and singular the said Messuage or Tenement, and Premises above-mentioned, with the Appurtenances, for and during the Rest, Residue and Remainder of the said Term of 21 Years hereby granted and assigned, now to come and unexpired, without the Let, Trouble, Hindrance, Molestation, Interruption and Denial of him the said *A. B.* his Executors, Administrators or Assigns, or of any other Person or Persons, claiming, or to claim, by, from or under him or them, or any of them. And further, That he the said *A. B.* his Executors and Administrators shall and will at any time or times hereafter make, do or execute all and every such further and other lawful and reasonable Act and Acts, Thing and Things in the Law whatsoever, for the further and  
more

more perfect assigning and transferring of the said recited Indenture of Lease, and Premises above-mentioned, with the Appurtenances, unto the said C. D. his Executors, Administrators and Assigns, for and during all the Rest and Residue of the said term of 21 Years above recited, now to come and unexpired, as by the said C. D. his Executors, Administrators or Assigns, or his or their Counsel Learned in the Law shall be reasonably devised, or advised and required. In Witness, &c.

A Mortgage is a Pawn of Lands, Tenements, &c. for Moneys borrowed, peremptorily to be the Creditor's for ever, if the Money be not paid at the Day agreed. *Mortgages.*

Mortgages are made several Ways, as by Lease for a long Term of Years, Lease and Release, Assignment, &c. in which Deeds there is contained a *Proviso* or Condition, that if the Money be paid at the Time limited,

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mitted, the Security so made shall cease and be void.

Until Failure the Mortgagor shall enjoy the Lands, &c. and if Failure be made, whereby the Mortgagee hath a Right to enter, and enters accordingly, yet the Mortgagor is entitled to the Equity of Redemption: But the Mortgagee on calling the Mortgagor to account in Chancery, may foreclose the Equity of Redemption, if the Money due be refused Payment.

To avoid Frauds in respect to Mortgages the Statute 4. & 5 W. & M. enacts, That if any Person who hath mortgaged Lands or Tenements, for Security of Money lent, shall mortgage the same Land, or any part thereof to any Person, (the former Mortgage being in Force) and do not make known to the second Mortgagee, the prior Mortgage, such Mortgagor shall be excluded from the Equity of Redemption: And the second or other Mortgagees shall have

have the Power of Redeeming,  
*&c.*

Upon a Mortgagor's paying the Interest of the Principal Money to the Mortgagee, these Mortgages oftentimes continue a long time, without disturbing the Possession or Parties.

Where there are Mortgages upon an Estate intended to be sold, Assignments are to be made in Trust, from the Mortgagees to the Purchaser by Indenture Tripartite, wherein the Mortgagee is to be of the first Part, the Mortgagor (*viz.* the Owner of the Land,) and his Heir, (if there be any of Age) of the second Part, and the Purchaser and his Trustees of the third Part; reciting the Mortgages, *&c.* and assigning them in Trust to attend the Fee, which is conveyed absolutely to the Purchaser by Lease and Release.

*A general Mortgage of an  
Estate.*

**T**HIS Indenture made, &c.  
Between A. B. of, &c. Gent.  
of the one Part; and C. D. of,  
&c. of the other Part; Witnesseth,  
That the said A. B. for and in  
Consideration of the Sum of, &c.  
to him in Hand paid by the said  
C. D. the Receipt whereof the said  
A. B. doth hereby confess and ac-  
knowledge, He the said A. B. hath  
granted, bargained and sold, and  
by these Presents doth grant, &c.  
unto the said C. D. All that Mes-  
suage, &c. situate, &c. And also  
the Reversion and Reversions, Re-  
mainder and Remainders, Rents and  
Services of all and singular the said  
Premisses above-mentioned, and of  
every Part and Parcel thereof, with  
the Appurtenances. To have and  
to hold all and singular the said  
Messuage or Tenement, Lands and  
Pre-

Premises above-mentioned, and every Part and Parcel thereof, with the Appurtenances, unto the said C. D. his Executors, Administrators and Assigns, for and during the term of 500 Years, next and immediately ensuing and following, and fully to be compleat and ended, Yielding and paying therefore yearly, during the said Term, one Pepper-Corn, in and upon the Feast of St. *Michael* the Archangel, if demanded. Provided always, and upon Condition, That if the said A. B. his Heirs and Assigns, do and shall well and truly pay, or cause to be paid unto the said C. D. his Executors, Administrators or Assigns, the Sum of, &c. with legal Interest for the same, in and upon, &c. next ensuing the Date hereof, Then these Presents, and every thing herein contained, shall cease, determine, and be utterly void, any thing herein contained to the contrary notwithstanding. And the said A. B. for himself, his Heirs and

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and Assigns doth covenant and grant to and with the said C. D. his Executors, Administrators and Assigns, that he the said A. B. his Heirs or Assigns, shall and will well and truly pay, or cause to be paid unto the said C. D. his Executors, Administrators or Assigns, the said full Sum of, &c. in and upon the said, &c. next coming, according to the true Intent and Meaning of these Presents. And also, That he the said C. D. his Executors, Administrators and Assigns, shall and may at all times, after Default shall be made in Performance of the *Proviso* or Condition herein contained, peaceably and quietly enter into, have, hold, occupy, possess and enjoy all and singular the said Messuage, Lands and Premises above-mentioned, and every Part and Parcel thereof, with the Appurtenances, for and during the Remainder of the said Term of 500 Years hereby granted, which shall be then to come and unexpired,

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with-

without the Let, Trouble, Hindrance, Molestation, Interruption and Denial of him the said *A. B.* his Heirs and Assigns, and of all and every other Person and Persons whatsoever. And further, That he the said *A. B.* and his Heirs, and all and every other Person and Persons, and his and their Heirs, any thing having or claiming in the said Premises above-mentioned, or any part thereof, shall and will at any Time or Times, after Default shall be made in Performance of the *Proviso* or Condition herein contained, make, do and execute, or cause or procure to be made, done and executed, all and every such further and other lawful and reasonable Grants, Acts, and Assurances in the Law whatsoever, for the farther, better, and more perfect, granting and assuring of all and singular the said Premises above-mentioned, with the Appurtenances, unto the said *C. D.* To hold to him the said *C. D.* his

## The Laws concerning

Executors, Administrators and Assigns, for and during all the Rest and Residue of the said Term of five hundred Years above-mentioned, which shall be then to come and unexpired, as by the said C. D. his Executors, Administrators or Assigns, or his or their Counsel Learned in the Law shall be reasonably devised or advised and required. And lastly, It is covenanted, granted, concluded and agreed upon by and between the said Parties to these Presents, and the true Meaning hereof also is, and it is hereby so declared, That until Default shall be made in Performance of the *Proviso* or Condition herein contained, he the said A. B. his Heirs and Assigns, shall and may hold and enjoy all and singular the said Premises above-mentioned, and receive and take the Rents, Issues and Profits thereof, to his and their own proper Use and Benefit, any thing herein contained to the contrary thereof, in

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any

in any wise notwithstanding. In  
Witness, &c.

*An Assignment of a Mortgage, to attend the Fee on  
a Purchase.*

**T**HIS Indenture Tripartite  
made, &c. Between A. B.  
of, &c. of the first Part; C. D. of,  
&c. of the second Part; and E. F.  
of, &c. and G. H. and J. K. of,  
&c. of the third Part. Whereas  
the said C. D. by his Indenture of  
Mortgage, bearing Date, &c. did  
demise, grant, bargain and sell,  
unto the said A. B. all that Mes-  
suage, &c. and the Reversion and  
Reversions, Remainder and Re-  
mainders, Rents, Issues and Profits  
thereof, and all the Estate, Right,  
Title, Interest, Claim and Demand  
whatsoever, of him the said C. D.  
of, in and to the same, or any  
Part or Parcel thereof. To be had  
G and

## The Lawes concerning

and holden unto the said A. B. his Executors, Administrators and Assigns, from the Date thereof, for and during the Term of 500 Years, from thenceforth next ensuing, and fully to be compleat and ended, At and under the yearly Rent of, &c. which said recited Indenture was defeasible on Repayment by the said C. D. unto the said A. B. of the Sum of, &c. at a certain Day therein mentioned, then to come, and now since past, as in and by the said recited Indenture may more fully appear. And whereas upon account this Day made up between the said C. D. and A. B. of and concerning the said Debt of, &c. and the Interest thereof, there remains justly due and owing from the said C. D. to the said A. B. for Principal and Interest on the said Mortgage, the full Sum of, &c. And whereas the said E. F. hath lately contracted and agreed with the said C. D. for the absolute Purchase of all and singular the said

Mes-

Messuage, &c. and Premises above-mentioned, for the Sum of, &c. and in pursuance thereof, in and by certain Indentures of Lease and Release, bearing Date, &c. last past, made between the said C. D. of the one Part, and the said E. F. of the other Part; He the said C. D. hath granted and conveyed the said Messuage, Lands and Premises, unto the said E. F. and his Heirs, as by the said Indentures of Lease and Release may more fully appear. Now to the end the said Term of 500 Years may be preserved and kept on Foot, to attend and wait on the Reversion and Inheritance of the said Premises, to protect and defend the same from all Incumbrances, subsequent to the Creation of the said recited Term, This present Indenture Witnesseth, That the said A. B. for and in Consideration of the Sum of, &c. to him in Hand paid by the said E. F. (by and with the Consent of the said C. D. testified by his being a

## The Laws concerning

Party to, and signing and sealing of these Presents) the Receipt whereof the said *A. B.* doth hereby confess and acknowledge, and in Consideration also of 5 *s.* of, &c. to the said *A. B.* in Hand paid by the said *G. H.* and *J. K.* the Receipt whereof the said *A. B.* doth hereby also acknowledge, He the said *A. B.* by and with the Consent and Agreement of the said *C. D.* testified as aforesaid, Hath bargained, sold, assigned and set over, and by these Presents doth bargain, &c. unto the said *G. H.* and *J. K.* (by the Nomination and Appointment of the said *E. F.*) all and singular the said Messuage and Premises above-mentioned, and every Part and Parcel thereof, with the Appurtenances. And also all the Estate, Right, Title, Interest, Claim and Demand whatsoever, of him the said *A. B.* of, in and to the said Premises, and of, in and to every Part and Parcel thereof, with the Appurtenances. To have  
and

and to hold all and singular the said Messuage and Premises, and every Part and Parcel thereof, with the Appurtenances, unto the said G. H. and J. K. their Executors, Administrators and Assigns, for and during all the Rest and Residue of the said Term of 500 Years above-mentioned, which is yet to come and unexpired, In Trust for the said E. F. his Heirs and Assigns, and such other Person and Persons to whom the Freehold and Inheritance of the said Premises shall appertain and belong, to protect and defend the same from all subsequent Incumbrances. And the said A. B. for himself, his Executors and Administrators, doth covenant and grant to and with the said E. F. his Executors, Administrators and Assigns, That he the said A. B. hath not done or committed any Act, Matter or Thing whatsoever, whereby or wherewith the said Premises above-mentioned, or any part thereof, are, is, shall or may

## The Laws concerning

be charged or incumbered in Title, Estate, or otherwise howsoever. In Witness, &c.

*Wills.*

**Lands and Tenements, &c.** being oftentimes convey'd by Will, I shall here take some Notice of these Deeds.

A Will is the Declaration of a Man's Mind and Intent, (either concerning the Disposition of his Lands or Goods) of what he would have done after his Decease. And this Conveyance was first ordain'd by 32 H. 8.

And by 29 Car. 2. All Devises of Lands, &c. are to be made in Writing, and signed by the Devisor, in the Presence of three credible Witnesses. If Goods, Chattels, personal Estate, &c. are given of above the Value of 30 l. by Word without Writing, which the Law calls a Nuncupative Will, the same must be likewise done in the Presence of three Witnesses, bid to bear Witness by the Testator, in his last Sickness, &c.

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A Will has no Force 'till after the Testator's Death ; but then without any farther Grant, Livery, &c. it gives and conveys Estates, and alters the Property of Lands and Goods in like manner as any Deed executed in a Man's Life-time ; and hereby Descents may be prevented, Estates in Fee-simple, Fee-tail, for Life or Years, &c. may be made : But a Devise must be of a Thing, and to a Person certain. *Lit. Sect.* 167, 168. *Co. 6.*

A Devise is to be govern'd by the Intention ; and the last Words of a Will do explain the first Words ; but it is not so in a Grant. A Devise of all Lands and Tenements, conveys all Reversions as well as Possessions ; and a Devise takes effect before a Descent, because the Devisee is in by Act executed in the Devisor's Life-time, though it be not consummated 'till his Death. *Roll. Rep.*

Where Lands are devised by Will, the Will ought to be prov'd in  
G 4 Chan-

## The Laws concerning

Chancery; but of Goods it must be prov'd in the Spiritual Court; and a Will both of Lands and Goods mix'd may be prov'd in the Spiritual Court.

Goods or Chattels, Legacies, &c. devised) are not to be taken by the Legatees themselves, but must be delivered to them by the Executors or Administrators; but in case of Devise of Lands, &c. the Devisee may immediately enter without the Executors. *Co. Lit. III.*

By Wills Executors are appointed for the Disposition of the Goods and Chattels of the deceased; and they are first to bury the Dead with Decency, make Inventories of the Goods, &c. in the Presence of two Legatees, or other sufficient Persons; Then prove the Will, sell the Goods, receive Debts, &c. and pay all Debts, before Legacies, in the Order following; First, Debts to the King, Debts on Record by Judgment, Statutes, &c. Debts by Obligations, Specialties, &c. Rents of Leases, Servant's Wages, Debts  
on

on Shop-books, &c. And if an Executor pays any of the latter before the former, he will be liable to the whole Debts of the Testator, if it be out of his own Estate for want of Effects. *Dyer 80. Plow. 542.*

It has been held that if a Man by Letter express his Will for the Disposal of Lands, it is sufficient; and no Devise in Writing is Revocable, but by some other Will or Writing, or by Cancelling, &c.

*A Will with Devise of Lands, &c. in the way of Settlement; And of Goods and Chattels.*

**I**N the Name of God, Amen, I A. B. of, &c. being weak in Body, but of sound Memory (Blessed be God) do this Day of, &c. in the Year of, &c. make and publish this my last Will and Te-

## The Lasts concerning

testament in manner following, that  
 is to say; *Inprimis*, I give to my  
 Loving Wife M. B. the Sum of,  
*&c.* *Item*, I give to my Son T. B.  
 the Sum of, *&c.* *Item*, I give to  
 my Daughter E. B. the Sum of,  
*&c.* *Item*, I give to my Brother,  
*&c.* all Payable within, *&c.* after  
 my Decease. *Item*, I give the  
 House I hold by Lease, from, *&c.*  
 situate, *&c.* which I now live in,  
 to my said Son T. B. To hold to  
 him during his Life, and after his  
 Decease, I give the same to my  
 Daughter E. B. during the Re-  
 mainder of my Estate and Interest  
 therein. *Item*, I give to my said  
 Wife M. B. all my Lands in the  
 Parish of, *&c.* which are not settled  
 upon her for her Jointure, To hold  
 to her for her Natural Life, she  
 making no Spoil, Waste or Destru-  
 ction thereupon. And from and  
 after her Decease, I give and de-  
 vise the same to my Son T. B. for  
 the Term of his Natural Life. And  
 after his Death, I devise the same  
 to my Daughter E. during her Na-  
 tural

tural Life, and after the Determination of that Estate, I give and devise the same to my loving Brothers, &c. and their Heirs, during the Life of my said Daughter E. to the Intent to preserve and support the contingent Uses and Remainders herein-after limited: But nevertheless, In trust, To permit my said Daughter E. to receive the Rents and Profits thereof during her Life, and from and after the Decease of my said Daughter E. Then to remain to the first Son of my said Daughter E. and the Heirs of the Body of such first Son lawfully Issuing. And for Default of such Issue, Then to the Use and Behoof of the second, third, fourth, fifth, and all and every other Son and Sons of my said Daughter E. begotten, the elder of such Son and Sons, and the Heirs of his Body lawfully issuing, to be always preferred, and to take before the younger of such Sons, and the Heirs of his Body. And for Default of such Issue, Then to the Use and Behoof of

## The Lasts concerning

of all and every the Daughters of the Body of my said Daughter E. and the Heirs of the Body of such Daughter and Daughters, as Tenants in Common, and not as Joint Tenants. And for Default of such Issue, Then to remain to, &c. and to the heirs Males of his Body begotten, &c. And for Default of such Issue, To remain to my own Right Heirs for ever. *Item,* All the rest of my Lands and Tenements whatsoever, whereof I shall die seized in Possession, Reversion or Remainder, I give to my said Son T. B. his Heirs and Assigns for ever. *Item,* All the Rest and Residue of my Goods, Chattels, and Personal Estate whatsoever; I give to my Wife M. B. And I make, constitute and ordain, &c. to be Executors of this my Will, In trust only for the Intents and Purposes in this my Will contained. And I make my loving Friends, &c. Overseers of this my Will, and to take care and see the same performed according to my true intent and meaning, and for  
their

their Pains, I give each of them the Sum of *£c.* I give to, *£c.* the Sum of ten Pounds a-piece to buy them Mourning. *Item,* I give to, *£c.* one Guinea a-piece to buy them Rings, *£c.* *Item,* I give to the Poor of the Parish of, *£c.* the Sum of, *£c.* And I appoint 50 *l.* and no more to be expended on my Funeral. In Witnes whereof I the said *A. B.* have to this my last Will and Testament, set my Hand and Seal the Day and Year above written.

*A. B.*  
Signed, Sealed and Delivered by the said *A. B.* as and for his Last Will and Testament, in the Presence of us who were present at the Signing and Sealing thereof.

*C. D.*

*E. F.*

*G. H.*

The

## **The Laws concerning**

The first Grant, and last Will, shall stand in Force.

Persons that are attainted of Treason, &c. Ideots, Madmen, Men Deaf, Blind, and Dumb, from their Nativity, Women Covert without their Husbands, Infants, &c. cannot make any good Deed or Conveyance; except the latter for Schooling, Diet, Cloaths, &c. fitting their Quality, &c. But Bastards, such as are Deaf, Dumb or Blind, that have Understanding, although they cannot express their Intentions otherwise than by Signs, Excommunicate and outlawed Persons, may make any Deed or Conveyance.

If a Deed be never so well written, and sealed, but not delivered, it is of no Force, for 'tis Delivery which gives Life to the Deed. A Man may impower another Person to seal and deliver a Deed for him, who doing it at his Commandment, and in his Name is good. And a Deed without any Date is good, provided the Time of Delivery can be

## Purchases of Lands.

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be proved, which in such case must be the Time of Commencement; and if it be sealed and delivered without Signing, it may be nevertheless a good Deed in Law.

Deeds must be all written before sealed and delivered; and to insert any thing in a Deed after it is sealed and delivered makes it void: Razure or Interlineation in a Material Part of a Deed, before the Sealing, may make the same void, if not mentioned on the Back-side. Reading a Deed false to any Person not capable of reading the same himself, makes it void.

A Deed may be dated as far back as you will before sealed, but it may not be dated forwards. Deeds made by Compulsion thro' Threatnings, &c. are void; and the Foundation of Deeds ought to be good and honest, and not to perfect any unlawful Contract, &c. All Conveyances, Grants, &c. made of Lands or Tenements to defraud any Purchaser of the same for valuable Consideration, as against such Purchaser,

## The Laws concerning

chaser, and every other Person lawfully claiming under him, shall be void. 27 *Eliz.*

Settlements of Estates in Fee are usually made to the Husband for Life, then to the Wife for her Jointure, and to their Issue in Remainder, with Leases therein to Trustees for Terms of Years, to raise Daughters Portions, and for Life, to support contingent Remainders, &c. with Power to make Leases for 99 Years, or three Lives, &c.

In the Counties of *Middlesex* and *Yorkshire*, Deeds of Purchase, &c. of Lands are to be register'd, Stat. 2. 6, and 7 *Anna.*

A N  
Abridgment

O F T H E  
L A W S  
C O N C E R N I N G

*All kinds of Tenures; Tenants and Occupiers of Estates, Distresses, and Replevin, Waste, &c. with Precedents of Grants, Leases, &c. interspersed.*

**T**HE largest Estate of Inheritance is that of Fee-simple, which is where a Person is seized, by Descent or Purchase,

*Fee simple.*

## The Laws relating to

chafe, of Manors, Lands or Tenements to him and his Heirs for ever. It is an unlimited Estate in the highest Degree. But if a Man purchase Lands, and the *Habendum* of the Conveyance is only to the Purchaser for ever, or to him and his Assigns for ever, he hath thereby no greater Estate than for Life, the Words *his Heirs* being omitted, which alone can make the Inheritance. *Co. Lit. 1.*

Discent, (which is where a Man dies seized of Lands of Inheritance, without making any Disposition thereof) is either Lineal or Collateral; Lineal, where it extends on a Right Line downwards, as from the Grandfather to the Father, from the Father to the Son, &c. and Collateral Discent comes from a Branch of the Side of the whole Blood, as the Brother of the Grandfather, of the Father, &c. *Bract. f. 67.*

Lands descend to the worthiest of the Blood, so that the elder Brother, and his Issue, shall inherit before

before the Younger, or any of his Issue; and all the Females of the Part of the Father, before any of the Males of the Side of the Mother. And it is a Maxim in the Law, that whenever Lands descend on the Part of the Father, the Heirs of the Mother shall not inherit; and when Lands descend on the Part of the Mother, the Heirs on the side of the Father shall not inherit. *Co. Lit. 12, 13.*

If there be no Heir male to an Estate in Fee-simple, &c. but divers Females, as Daughters, Sisters, &c. they shall inherit together, and are by the Law esteem'd but one Heir, call'd Parteners.

Persons having Lands or Tenements in Fee-simple, either by Purchase or Descent, may make any Disposition thereof at their Pleasure, by Conveyance executed in their Lives, or by last Will and Testament.

Fee-tail is the next Tenure to Fee-simple; this is an Estate to a Man and his Heirs, with Limitations, &c. *Fee-tail.*

*Ec.* and it is either General or Special; General, where Lands or Tenements are given to a Man and the Heirs of his Body begotten; or to a Woman and the Heirs of her Body begotten: And Fee-tail Special is where it is certainly set down of whom the Issue shall proceed, as when Lands are granted to a Man and his Wife, and the Heirs of their two Bodies.

If Lands are given to Husband and Wife, and the Heirs of the Body of the Husband, the Wife hath only an Estate for Life, and the Husband hath an Estate in Tail; and if the Limitation be to his Heirs which he shall get on his Wife, a Special Tail is thereby created in the Husband, but the Wife has nothing. *Co. Lit.* 20. *Ec.*

Tenants in Tail can make no greater Estates than for their own Lives; nor grant a Lease in Reversion: But for 21 Years, or 3 Lives in Possession, they may, reserving the ancient Rents, *Ec.*

Where

Where Lands or Tenements are given to a Man and his Wife in Special Tail, if either of them die without Issue, the Survivor is call'd Tenant in Tail after Possibility of Issue extinct. *Fee-tail after Possibility of Issue extinct.*

And if there be Issue between them after such Gift made, and such Issue die, so as there be none alive to inherit by force of the Tail, it is the same.

Tenancy by the Curtesie is an Estate cast upon a Husband, of the Wife's Lands after her Death: and it is where a Husband marries a Woman seised of Lands in Fee-simple, Fee-tail general, &c. and having Issue by the same Wife, (either Male or Female) born alive, if the Wife die in the Life-time of the Husband, he shall enjoy the Estate during his Life. *Curtesie of England.* *Lit. Ten. 18.* And if the Issue die before the Wife, the Husband nevertheless is entitled. *Co. Lit. 30.*

By Marriage with a Woman who hath an Estate in Freehold, a Man gains such Estate in Freehold, and

and he may enter, &c. If she have a Term of Years he is possessed thereof in her Right; and if she have Goods and Chattels, by the Intermarriage they immediately become the Husband's. But as the Man is thus entitled to the Estate of the Wife, he is liable to the Payment of her Debts, during her Life, but not after her Death,

*Tenant in  
Dower.*

Dower is a Provision which the Law makes for the Wife out of the Husband's Lands, after his Decease; as where a Man seised of an Estate in Lands or Tenements in Fee-simple, Fee-tail general, or as Heir in Special Tail, marries a Woman, and dies, the Wife after his Death shall be endowed of a third Part of the Lands that were her Husband's at any time during the Coverture, to hold during her Life. *Lit. Ten.* 19.

There is no necessity of Issue in cases of Dower for the Wife, as in case of Tenancy by the Curtesie for the Husband; and by Statute 9 H. 3. A Widow is to be assign'd her Dower by the Sheriff immediately

ately after the Death of her Husband; she is to remain in the chief House of her Husband, if it be not a Castle, 'till she is endow'd, not exceeding 40 Days; and she shall be assigned the third Part of all the Land which was her Husband's in his Life-time. But the Wife shall not be endowed of Lands or Tenements, that her Husband jointly held with any other at the time of his Death.

If Lands or Tenements be assured to a Woman after Marriage for term of Life, or in Jointure, the Wife may refuse the Lands so appointed her in Jointure, and have her Dower at the Common Law of all such Lands whereof her Husband was seised. *Contra*, if a Woman have Lands settled on her before Marriage. *Co. Lit.*

If a Woman commit any Crime for which she is attainted of Treason, Murder, or Felony; or if she depart from her Husband, and live in Adultery with another Man, and  
is

is not reconciled again to her Husband, she shall forfeit her Dower.

*Tenant for  
Life.*

Tenant for Life, is no more than where Lands are demised and granted to another for his Life, or the Life of some other Person; and the Lessee is called a Freehold Tenant; but this is understood to be the least Estate of Freehold. *Lit. Ten. 28.*

If a Man make a Grant of Lands, Tenements, &c. to another, and therein express no Estate, it has been held, That the Lessee or Grantee has thereby an Estate during Life: As in cases of Masters and Servants, where if a Man retain a Servant generally without mentioning for what Time, the Law adjudges it to be a Year.

*Tenant for  
Term of  
Years.*

When Lands or Tenements are let to another Person for a certain Term to come, and the Lessee makes an Entry on the Lands by force of the Lease, he is called Tenant for Term of Years.

The Lease is to have a certain Commencement and Determination; and there must be an Accept-

ance of the Things demised ; and if a Man let Lands to another for Years, and die before the Entry of the Lessee, yet may the Lessee enter into the Lands and Tenements.

*Co. Lit.*

Tenancy at Will is where Lands or Tenements are let to any Person, to hold at the Will of the Lessor. *Tenant at Will.*

He is called Tenant at Will, as he has no certain Estate, but is subject to the Ejectment of the Lessor, at his Pleasure ; but if Lessee at Will sow the Land, he shall reap his Crop of Corn ; Lessee for Life having an uncertain Interest is likewise entitled to the same. *Contra* in Lease for Years where a certain Term is express'd, if the Corn be not ripe 'till after the Term is expired, for in this case the Owner of the Soil will have the Corn. *Co. Lit.* 55.

A Tenant by Copy of Court-Roll is such who holds Lands, &c. of his Lord, for Life, or in Fee, by Copy of Court-Roll ; and a Copyholder in former times had but an Estate at Will, in Judg-

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## The Laws relating to

Judgment of Law ; but now by the Custom of the Manor, these Estates are discendible, and the Heirs of the Tenants shall inherit.

*Lit. Ten. 40.*

*See more of the Laws relating to Tenants for Life, Years, and at Will, &c. in the following Chapter of Leases, &c.*

## A Deed of Feoffment of Lands.

**T**HIS Indenture made, &c. Between *A. B.* of, &c. of the one Part; and *C. D.* of, &c. of the other Part; Witnesseth, That the said *A. B.* for and in Consideration of the Sum of, &c. to him in Hand paid by the said *C. D.* the Receipt whereof the said *A. B.* doth hereby confess and acknowledge, and for other good Causes and Considerations him thereunto moving, He the said *A. B.* hath granted, bargained and sold, aliened, enfeoffed, released and confirmed, And by these Presents doth grant, bargain,

gain, &c. unto the said C. D. his Heirs and Assigns for ever, All that Messuage, &c. now in the Possession of, &c. And also the Reversion and Reversions, Remainder and Remainders, Rents and Services thereof, and also all the Estate, Right, Title, Interest, Claim and Demand whatsoever, of him the said A. B. of, in and to the same Premises, and of, in and to every Part and Parcel thereof. To have and to hold the said Messuage, &c. and Premises above-mentioned, with the Appurtenances, unto the said C. D. his Heirs and Assigns, To the only proper Use and Benefit of him the said C. D. his Heirs and Assigns for ever, Under the yearly Rent of four Pence. And the said A. B. for himself, his Heirs and Assigns, doth covenant and grant to and with the said C. D. his Heirs and Assigns, That he the said C. D. his Heirs and Assigns, shall and may from time to time, and at all times hereafter, peaceably and quietly have, hold,

## The Laws relating to

occupy, possess and enjoy all and singular the said Premisses above-mentioned to be hereby granted, with the Appurtenances, without the Let, Trouble, Hindrance, Molestation, Interruption and Denial of him the said *A. B.* his Heirs and Assigns, and all and every other Person and Persons whatsoever, claiming or to claim, by, from or under him, them or any of them, (except a certain Lease granted to, &c. of part of the said Premisses, for the Term of, &c. under the yearly Rent of, &c.) And further, That he the said *A. B.* and his Heirs, and all and every other Person and Persons, and his and their Heirs, any thing having or claiming in the said Premisses above-mentioned, or any part thereof, by, from or under him, (except as before excepted) shall and will at all times hereafter, at the Request and Costs of the said *C. D.* his Heirs and Assigns, make, do and execute, or cause or procure to be made, &c. All and every such  
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further and other lawful and reasonable Grants, Acts and Assurances in the Law whatsoever, for the further, better, and more perfect granting, conveying and assuring of the said Premises hereby granted, with the Appurtenances, unto the said C. D. his Heirs and Assigns, To the only proper Use and Behoof of him the said C. D. his Heirs and Assigns for ever, according to the true Intent and Meaning of these Presents, and to and for none other Use, Intent and Purpose whatsoever. And lastly, The said A. B. hath made, ordained, constituted and appointed, and by these Presents doth make, &c. E. F. of, &c. and G. H. of, &c. his true and lawful Attornies jointly, and either of them severally, for him and in his Name into the said Messuage, Lands and Premises, with the Appurtenances hereby granted, or mentioned to be granted, or into some part thereof, in the Name of the whole to enter, and full and peaceable Possession and Seisin thereof

# The Laws relating to

for him, and in his Name to take and have, and after such Possession and Seisin so thereof taken and had, the like, full and peaceable Possession and Seisin thereof, or of some part thereof, in the Name of the whole, unto the said C. D. or to his certain Attorney in that behalf, to give and deliver, To hold to him the said C. D. his Heirs and Assigns for ever, according to the Purport, true Intent and Meaning of these Presents, Ratifying, confirming and allowing all and whatsoever his said Attorneys, or either of them, shall do in the Premises. In Witness, &c.

*Of Leases, Tenants and Occupiers of Estates, Demand and Tender of Rent, Distresses and Replevin, Waste, Actions by Landlords and Tenants, &c.*

**A** Lease is a Contract put into Writing for a temporary Enjoyment of a real Thing, under a certain yearly Rent, and such other Conditions and Agreements as are mutually agreed upon by the Parties concern'd. *Leases.*

It also signifies a Demise of a Messuage, &c. to another for a less Term than he that doth let the same, hath in it. For when a Lessor grants over all his Estate unto another, in this case it is more properly call'd an Assignment.

Leases may be made for Life or Years; (and they may be made for ten thousand Years) for Months, Weeks or Days, as the Lessor and Lessee can agree.

## The Law relating to

And some of these Leases begin presently, others at a Day to come.

A Lease for Years may be made to commence at a Day to come; but if a Man have a Lease for 100 Years, and he by Deed grant to another all the Residue of his Term of Years, that shall be to come at the time of his Death, this is void for Incertainty.

Where a Lease is made to one for Years, or for a Term of Years determinable upon Lives, and afterwards a Lease is made to another of the same Land, To hold from the Expiration of the former Lease, this is a good Lease, and certain enough. So if a Lease be granted to one Man for Life, and after the Reversion is granted to another for Life, when by Death, Forfeiture, &c. it shall become void, this is a good Lease.

All Leases for Years are to have a certain Beginning and Ending; either by an Enumeration of a certain Number of Years, or by Reference to some thing, whereby it may be reduced to a Certainty. If

If a Parson make a Lease of his Glebe-Land; for so many Years as he shall continue Parson; or until he be advanc'd to some Preferment in the Church; or if a Man grant a Lease during the Coverture of A. B. and E. his Wife, or the like, these will be void for want of Certainty; though perhaps Livery and Seisin may help them. But a Lease for so many Years as A. B. hath in Lands, or for so many Years as he shall name, &c. will be attended with a Certainty, sufficient to make them good.

Land, Houses, and generally all Profits arising by Culture of Man, or spontaneously, whether it be on the Surface of the Earth, as Grass, &c. or hid in the Bowels thereof, as Mines, Gravel, Quarries, &c. may be leased. *Noy 57. Co. 58.*

Every thing that may be leased must be such, into which the Lessor may enter and distrain for his Rent; and if a Man seised of Lands and possessed of divers Chattels, make a Lease for Years of them,

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and

# The Law relating to

and the Lessee covenant and grant that he will pay during the Term one hundred Pounds on such Days, this is no Rent, but a Sum in Gross. *Dyer 276.*

All Persons who are not disabled by any natural or civil Incapacity, may make Leases of Lands and Tenements; but no Man may convey a greater Estate than he hath, unless it be Tenants in Tail, who are empower'd by Act of Parliament, and their Leases made in pursuance of the Statute, shall bind those in Remainder. *Stat. 32 H. 8.*

These Leases by Tenants in Tail, are to be made by Deed indented; to commence from the Day of making; if there be an old Lease in being of the same Land, it must be either surrendered, or expire within a Year after the making of the new one; there must not be a double or concurrent Lease, subsisting at one and the same time; The Leases are not to exceed three Lives, or 21 Years, from the time of making, (tho' they may be made for a less Term;

Term) they must be of Lands, &c. manurable or corporeal, whereout a Rent may be legally issuing or reserved, and of such Lands or Tenements, which have been most commonly letten to Farm, for the Space of twenty Years next before the making of the new Lease; The accustomed yearly Rent, or more, is to be reserv'd to the Lessor and his Heirs, to whom the Reversion shall appertain: such Leases must not be without Impeachment of Waste, nor be against any Special Act of Parliament; and they are to have all due Ceremonies for their Perfection, as Livery of Seisin, &c. where the same is requisite.

When Leases are made with all these Qualities, then they are binding to the Tenant, and the Issue in Tail; for otherwise although they will bind the Tenant himself that made them, yet they will not bind the Issue, but as to them they will be void, or voidable at least; but if the Issue accept the Rent after the Death of the Tenant in Tail,  
by

by this means the Lease is confirmed and made good.

But however a Lease be made by Tenant in Tail, it will not bind him that comes to the Estate, by Virtue of a Remainder over; nor to him that is the Donor; and therefore if a Tenant in Tail make a Lease warranted by the Statute, and after die without Issue, so that the Land doth remain over to another, or revert to the Donor; in these cases neither he in Remainder, nor the Donor shall be bound by this Lease, for as to them the Lease is void; but by a common Recovery the Tenant in Tail may make such Leases binding to those in Remainder over, &c.

The Husband may make Leases of Lands, Tenements, &c. whereof he hath any Estate of Inheritance in Fee-simple, Fee-tail, &c. in Right of his Wife, so as the Conditions requir'd in Leases made by Tenants in Tail, be observ'd, and the Wife do join in the Lease, by being made a Party thereunto with her

her Husband, and do seal and deliver the same in Person.

If the Lease made by the Husband be not warranted by the Statute, it will be good against him, as in other Cases, but not against the Wife; but when the Lease is made according to the Direction of the Statute, and the Wife is made a Party, &c. It binds the Husband and Wife both, and the Heirs of the Wife. The Husband and the Wife together may by Fine or Recovery make what Leases they please of her Land, or charge it for what time they will, and such Leases and Charges shall be good and binding against the Husband and Wife, and their Heirs.

Bishops with the Dean and Chapter, Parsons with the Consent of their Patrons, &c. Masters, Governors and Fellows of Colleges, Hospitals, &c. might by the Ancient Common Law have made Leases for Lives or Years, or any other Estate, of their Spiritual or Ecclesiastical

## The Laws relating to

stical Livings, without Limitation : And at this Day Bishops, Spiritual Persons, &c. except Parsons and Vicars, may make Leases of their Spiritual Livings for three Lives, or 21 Years; and such Leases will be good against themselves and their Successors; but they must have the following Conditions.

They must have the Effect of all the Qualities required by 32 H. 8. in Leases made by Tenants in Tail, *viz.* They are to be made by Deed indented; to begin from the time of making; the old Lease to be surrendered up; not to exceed three Lives, or 21 Years; to be of Lands manurable or corporeal, and which have been commonly let to Farm for the Space of twenty Years; the ancient accustom'd Rent is to be reserved; they are not to be made without Impeachment of Waste, and to have all usual Ceremonies, &c.

Leases made by a Bishop, or any Corporation, must be confirmed by the Dean and Chapter, and others  
that

that have Interest; and tho' where they are made not agreeable to the Statute, these Leases are said to be void, this is understood as against the Successors, and not against the Lessors themselves, for the Leases are good so long as the Lessors live, or at least so long as they continue to enjoy their Preferments.

Some of the Leases that are made by the Colleges and Houses of the University, &c. have Corn-Rent reserv'd upon them; a third part of the Rent in Corn. By 18 Eliz.

If a Prebend, Parson, or Vicar, make a Lease for Years, not warranted by the Statute, this is void by the Death of the Lessor, and the Successor need not make any Claim or Entry to avoid it.

If a Tenant for Life make a Lease for Years, and after die, in this Case the Lease for Years is void. If a Tenant in Tail make a Lease for Years, warranted or not warranted by the Statute, and afterwards die without leaving any Issue; this Lease

Lease is void as to him in Reversion. But a Tenant in Fee-simple, may by the common Law make a Lease for longer time than three Lives, or 21 Years, and be good.

If a Lease be made for a Term of Years Conditional, that upon such Contingent the same shall be void; in this Case as soon as that Contingency happens, the Lease is void *ipso facto*, without any Re-entry, &c. But if it be a Lease for Life made upon certain Conditions, the Lessor must enter, &c. before he can avoid the Lease.

Leases made to Persons under Age, may be good or void at the Lessee's Election; for he may refuse and wave the Land before the Rent-day comes, and then no Action of Debt will lie against him; but if the Infant become of full Age before the first Rent-day, it is otherwise. *Cro. Jac.* 320. Leases made to Stranger Artificers, &c. not being Denizens, of any Dwelling-house or Shop, are held void, and of none effect. By *Stat.* 32 *H.* 8.

If the Lessor die on the Day the Rent is due and payable, before Sun-set of the same Day, it shall go to the Heir, and not the Executor; and where Rent is reserved by a Tenant to himself, his Executors, Administrators and Assigns, during the time of the Leases, it shall go to the Heir. *Salk.* 578. *2 Saund.* 368.

If Lessee for Life, or Years determinable upon Life, make a Lease for Years, reserving Rent at the four quarterly Feasts, and die, so that the Primitive Estate determines before the Quarter Day, the Rent of this Quarter is gone.

If a Rent be reserved beyond the Value of the Land; though the Executor never make any Entry or Assignment of the Term, he will be obliged to pay the Rent, as he represents the Person of the Testator, who was bound by the Lease.

The Husband shall have the Arrears of Rent reserved to the Wife, *dum sola*, after her Death: And on Demise to a *Feme sole*, if she afterwards marry and die,  
Action.

## The Laws relating to

Action of Debt will lie against the Husband upon her Indenture. 32 H. 8. 1 Lev. 28.

*Obligations of the Lessee, Demand and Tender of Rent.*

All Lessees are obliged to perform whatever they covenant or agree to by their Leases; and as the Payment of the Rent is their greatest Obligation, I shall begin with that, and first Demands for the same, when due, by the Landlord, &c.

If a Man demand a Rent only before he distrains, he may do it at any time after the Day of Payment of it; and it must be made upon some part of the Land, out of which the Rent doth issue, on that part that is most eminent and remarkable; as the Porch of a Capital Messuage, the Fore-door of a House, the Gate through which you enter to Lands, &c. But if a place be appointed for the Payment of the Rent, it must be demanded there only by the Lessor or his Attorney.

Where Demand is necessary to gain a Re-entry into Land, the Rent must be demanded the last Day given

given to the Lessee for Payment, and the latter part of the Day, so long time before Sun-set, as wherein the Money to be paid and receiv'd, may be conveniently told and numbered by Day-light, or before Sun-set; the Person demanding must remain continuing his Demand 'till it be dark; and all this is to be done before good Witnesses. And if at the time of Demand the Rent be not tendered by the Lessee, or some Person for him; or if it be denied; this is a Disseisin of the Rent for which the Lessor may have Assize, and also re-enter, &c. *Bro. Disseis.* 69.

But if there be a Tender of the Rent made by the Tenant the last Moment of the Day, and no Man is ready to receive it, the Lessor is debarred of his Remedy, unless he can afterwards meet with the Lessee upon some part of the Lands, and then demand it; and in this Case it is the best way to be on the Lands the next Day of Payment, and then and there demand the  
Rent

## The Laws relating to

Rent and Arrearages; and if no body tender it, then you may proceed *ut supra*. *Co. Lit.* 153.

Tender upon the Land is not material by the Tenant without there be a Demand; for if the Tenant tender the Rent on the Land at the Day, and no Body from the Lord be present to receive it, yet may the Lord afterwards distrain for it, having first demanded the same, on the Lands; but if the Tenant tender his Rent to the Person of the Lord, the Lord may not distrain him 'till he has personally demanded it of the Tenant.

Demand for Rent must be made, though the Tenant or any for him be not there upon the Premises to pay it. *Co. Lit.*

If the Lessor demand the Rent before he die, his Heir may enter; but if the Lessor die after the Day without demanding the Rent, and afterwards the Heir make a Demand, this is not a good Demand to give Re-entry. If Words in the Condition of a Lease, &c.

be

be that the Grantor shall enter, or the Estate shall cease without Demand, there Demand may not be necessary; but the Words *without Demand* must be expressly mentioned.

If the Lessee, &c. will tender to save the Forfeiture of Lands, &c. he is obliged to do it in that manner for time and place, as the Lessor must demand it, and he need not do it at any other time, or in any other Place, or Manner. As if a Lease be made, rendring Rent at *Lady-day* yearly, and the Lessee covenants to pay it on *Lady-day*, here he must tender it at the very Day to save the Covenant, &c. And if the Lessee make a Tender of his Rent, it must be done at the most notorious Place of the Land, &c.

Where a Lessor distrains for Rent, and the Lessee tenders him all the Arrearages, but the Lessor refuses it, he may not afterwards distrain for the same; for this is a good Tender to bar him in an Avowry; and he can  
have

have no Remedy for his Rent after.

When a Rent is payable to Joint-tenants or Coparceners, Tender to one of them is sufficient; so is also Tender by one Joint-tenant, &c. good for all the rest. But Tender in word only, without producing the Rent in Arrear, is not good; for the Lessee must prove he tendered the Money.

Payment of Money to the Wife, due to the Husband is not good.

*Palm. 206.*

If a Lease be made rendring Rent at *Michaelmas*, or twelve Days after, the Lessee may tender it the latter part of either of the Days, and be good. And if he make a Tender the first, and the Lessor be not there, and he tender it not the last Day, though the Lessor demand it, he cannot re-enter. *Co. 129.*

Of Distress  
or Reple-  
vin.

A Distress is where Goods or Cattle of another are taken for some Wrong done; and it is incident of com-

common Right for Rent, or any certain Service. *Co. Lit.* 83.

A Distress may be taken for Fines and Amerciaments in Court-Leets, without Prescription; for they are the King's Courts, though in the Hands of private Persons. But as to Courts-Baron, which were instituted for the private Emolument of Lords of Manors, Amerciaments in these Courts may not be levied by Distress without Prescription.

A Distress cannot be taken in the Night-time for any Cause, except it be Damage-Feasant. It must be of a thing in which some hath in the Eye of the Law a valuable Property; and not of Goods in a Tradesman's Hand to exercise his Trade with, Materials in a Weaver's Shop, a Horse in an Inn, &c. nor generally of any thing of another's that comes to the Party's Possession in the way of his Trade. And if other sufficient Distress be to be had, neither the Tools of a Man's Trade, nor Beasts of the Plough,

## The Laws relating to

Plough, are distrainable. *Co. Lit.*  
47. *Dyer* 117.

A Cart or Wagon full of Corn, a Horse laden with it, &c. may be distrained; and Horses, &c. drawing a Cart loaden may be severed from it, and distrained for Rent-service; and though a Horse with the Rider on it may not be distrained for Rent, yet it may for Damage-Feasant, and be led to the Pound with the Rider on his Back. *Sid.* 440, &c.

A Distress cannot be taken on the King's Lands, while in his Possession. And for Rent a Man may not distrain but upon the same Lands, &c. charged with it; unless the Owner drive away the Beasts, &c. in view of the Lessor coming to distrain; for in this case the Lessor, &c. may justify the Pursuit, and if he takes the Cattle presently on such fresh Pursuit, tho' in another's Ground or House, or in the Highway, the Taking is lawful. *11 H. 7. 34 H. 6, &c.*

If one takes a Distress of Goods or Cattle without Cause, the Owner may Rescue them before they are impounded; but not afterwards, because they are in Custody of the Law. Nor may a Stranger in the first Case, only the Owner. Where a Distress taken in the King's Highway for Services, &c. may be rescued, See *Cro. El.* 700.

Distresses are to be reasonable, and not excessive; If they are unreasonable, an Action lies on the Statute 51 *H. 3. De Distractione Scaccarii.* And it is commonly held that two Distresses can't be taken for one and the same Cause: But where a Distress dies, the Landlord may distrain again. 2 *Inst.* 207. 13 *H. 4. c. 17.*

By Stat. 2 *W. & M.* when Goods or Chattels are distrained for Rent due upon any Lease, &c. and the Tenant or Owner of the Goods do not within five Days after the Distress taken, and Notice given, or left at the House, &c. Replevy the  
I same

## The Laws relating to

same according to Law, then after the end of the said five Days, the Persons distraining with the Under-sheriff, Constable, &c. are to cause the Goods to be appraised by two sworn Appraisers, who are to take an Oath to appraise the same truly; and after such Appraisement, the Goods, &c. are to be sold for the best Price, towards Satisfaction of the Rent and Charges of Distress, Appraisement and Sale; leaving the Overplus (if any) in the Hands of the said Sheriff or Constable for the Owner's Use.

Sheaves or Cocks of Corn, or Corn loose, or in the Straw, Hay in a Barn or Granary, or upon any Hovel, Stack, or Rick, &c. upon any part of the Land charged with the Rent, may be seized and secured as a Distress, but not be removed; and if the same be not replevied *ut supra*, the same is to be sold, &c.

This Act gives treble Damages and Costs for Pound-breaches, and  
Rescous

Rescous of Goods or Chattels distrain'd for Rent : But if a Distress be wrongfully taken, for Rent pretended to be in Arrear, where in truth none is due, &c. double the Value of the Goods and Chattels so distrained and sold, will be recovered against the Persons taking the same, with full Costs of Suit.

The 8 *Ann.* enacts, That no Goods or Chattels in or upon any Messuage or Lands, &c. let by Lease for Life, or Years, &c. shall be liable to be taken in Execution, unless the Party, at whose Suit the Execution is sued out, before the Removal of the Goods, pay to the Landlord, &c. all Monies due and in Arrear for Rent, provided the same do not amount to more than one Year's Rent ; and if the same does exceed it, on Payment of the Year's Rent, the Execution shall proceed.

If any Lessee for Life or Years, shall fraudulently carry off from the Premises, his Goods or Chattels,

## The Laws relating to

tels, with intent to prevent the Landlord from distraining the same for Arrears of Rent reserved, the Landlord, or any Person by him impowered, may within five Days after their Removal take and feize such Goods and Chattels, wherever found, as a Distress for such Rent, and the same to sell, &c. But if the Goods are sold *bona fide*, and for a valuable Consideration before Seizure, the Landlord may not in such case take them for a Distress.

Any Person having Rent in Arrear, upon any Lease for Life, or Lives, Years, &c. which is expired, may distrain for the same, after the Determination of such Lease; provided it be done within six Kalendar Months after the ending of the Lease, and during the Continuance of the Landlord's Title, and the Possession of the Tenant.

In Cases where the Cattle distrain'd are not of the full Value of the Arrears distrain'd for, (in  
AVOW.

Avowry, ) the Party to whom the Arrears is due, his Executors, &c. may distrain again for the Residue of the Rent in Arrear. *Stat. 17 Car. 2.*

If Cattle, or any thing that has Life be distrained, they must be put in a Pound-Overt, that the Owner may resort to feed them, which he is to do at his Peril: But if the Person distraining put them in a Pound-Covert, or Close, then he is to be at the charge of keeping them. *Co. Lit. 47.*

If a Man take a Distress of Goods, which may receive injury by wet Weather, &c. he ought to impound them in a House, or some other Pound Covert; and if he impound them in the Pound Overt (*viz.* the common Pound) he shall be answerable for them, and the Damage.

By 1 Ph. & M. No Distress taken is to be driven out of the Hundred where taken, except to a Pound-Overt in the same County, not exceeding

## The Laws relating to

ceeding three Miles distance; and no Distress shall be impounded in several Places, under the Penalty of 5 *l.* and treble Damages.

*Replevin.*

If the Party whose Goods are distrained, thinks himself wrong'd, and would have the Goods or Cattle restored, he may obtain it by Replevin; but if he be only desirous of a reasonable Satisfaction for them, he may bring an Action of Trespass or Trover.

But he who claims no Property in the thing distrained, shall not have Replevin; and Replevin lies not against the King, or where he is Party, nor where the taking was in his Right. 3 *H.* 7.

An Infant may bring Replevin; and Executors or Administrators shall have it *de bonis Testatoris*, tho' taken in the Testator's Life-time. Husband and Wife shall join in a Replevin for a Distress taken on the Wife's Lands; and for Goods and Chattels of the Wife taken when sole, the Husband alone shall have it.

it. If the Beasts of several Men are taken, they must have Replevin severally, and not join, unless they are Joint-tenants, or Tenants in Common.

Replevin may be of things whereof one has only a Special Property or Possession, as where Goods are pledged or bailed to one to keep, for the Possessor is answerable; or where Cattle are taken, that agist or manure Land; If one distrain Sheep, which afterwards have Lambs, it lies for both; so of a Cow and Calf not calved, a Sow and Pigs, &c. It lies of Wood cut, also of any Goods or Chattels, as well as of live Cattle; and generally whatever is distrained may be replevied. But of things annexed to the Freehold, it does not lie; nor of Deeds and Writings, concerning Lands (except in a Box.)

Replevin lies either in the King's Bench, or Common Pleas, by Writ. *Dyer* 246. It lies in the County-Court

The Laws relating to

Court, and Court-Baron, by Plaintiff; and by Custom a Hundred-Court may hold Plea of Replevins, but they are not to be granted out of Court.

A Replevin is triable by either Plaintiff or Defendant without *Proviso*. The Declaration must express the Time and Place of taking the Distress; if the Count in the Replevin is ill, and also the Avowry, the Plaintiff shall have no Return: But Uncertainty in the Count or Avowry may be reduc'd to a Certainty, by the Sheriff's Enquiry on the *Retorno habendo*. *Show. 99. 1 Leon. 193.*

A *Retorno Habendo* is a Writ that lies for him who has avowed a Distress, and made out his Proof, that the same was lawful, or where (upon Removal of the Plea into the Courts above) the Plaintiff, whose Cattle were replevied, makes Default, or becomes Nonsuit, &c. And by this Writ the Sheriff is commanded to make a Return of the Cattle to the Defendant in the Replevin.

A

A *Second Deliverance* is a Judicial Writ, that lies after a Nonsuit of the Plaintiff, or a *Retorno Habendo*, commanding the Sheriff to replevy the same Cattle again, upon Security given by the Plaintiff in the Replevin for a Re-delivery of them, if the Distress be justified.

The next Writ is a *Returnum irreplegiabile*, directed to the Sheriff for the final Restitution or Return of Cattle, as unjustly taken by another, and so found by Verdict; and it is granted after a Nonsuit in a second Deliverance.

In Replevin by Writ the Sheriff is to enquire of the Property, and if it be found for the Plaintiff, then a Re-deliverance shall be made to him, and an Attachment against the Defendant, to answer for the Contempt in taking and unjustly detaining the Cattle of the Plaintiff. And if the Defendant in the Replevin claims the Property in Court, and it be found against him, the Plaintiff shall recover the

## The Laws relating to

Value of the Cattle, and his Damages.

Sheriffs of Counties are oblig'd to appoint Deputies for granting Replevins: If the Bailiff of a Liberty refuses to replevy, the Sheriff may do it; and if Cattle are distrain'd and impounded in a Castle, the Sheriff must notwithstanding make Replevin, and if occasion be, he may take the *Posse Comitatus* with him. *Roll. Abr.* 565.

A Distress at the Common Law did not alter the Property, and was but in the Nature of a Pledge for the Distrainer's Security; who having no Property therein could only detain, and not use the same; or even for Preservation, milk a Cow, &c. *Noy* 119. 2 *Leon.* 174.

The Lord of a Manor may distrain the Tenant's Cattle on the Common, if he put more than he ought, for they are then Damage-Feasant; the Commoner has the same power with respect to Cattle

cle of Strangers. 43 Ed. 3. c. 32.

33 H. 8.

Common is defined to be a Right to the Use of that which is another's jointly with the Proprietor; and it began first by Permission, or rather by the Incroachment of Tenants on the Lords of Manors.

Of Common, and Common of Pasture, &c.

Common is of four kinds, as when 'tis of Grass-Ground, 'tis called Common of Pasture; if it be a Right of Fishing, then 'tis termed Common of Piscary; if of digging for Turf, Common of Turbary; and if of Wood, 'tis called Estovers. And Tenants who have a Right to use the Wood, whether their Estates be for Life or Years, may by the Law take House-boot, Fire-boot, Hedge-boot, &c. tho' not authorized by Agreement, if not restrained by any particular Covenant. Co. Lit. 41.

Common of Pasture is claim'd by Grant as Common in Gros, or by Prescription, but 'tis usually claim'd by the latter; Common in Gros

Gross is where Common of Pasture is claimed by special Grant in Writing, and not by reason of any Land; whether the Common be for any, or all kind of Beasts, or for any Number.

Pigs are not esteem'd commonable Cattle; though a Custom or Prescription may be alledged for all sorts of Cattle, or for some sort only; or it may be for the whole Year, or half yearly, &c. But if the Prescription be for Common Appendant, it must be for Cattle Levant and Couchant upon the Land to which the Common is appendant; it ought not to be to a thing of a late Commencement, but be time out of Mind, &c. *Brownl.* 180, 189, &c.

Copyholders may alledge that by the Custom every customary Tenant ought to have Common in the Lord's Waste; and in like manner they may prescribe to have Common in the Soil of another; but they are not to do it otherwise than

than in the Lord's Name. 6 Co.

59.

Common Appendant was anciently annexed to arable Land, for the Maintenance of the Cattle that manured it; and though a House be built on the Land, the same be converted to Pasture, &c. yet may the Common be claimed for such Beasts as are kept on the Land that was anciently arable; it may be claimed to be taken in a Field, when not sowed to Corn; and 'tis not only for such Cattle as manure the Land, but for such as dung the same, as Sheep. 4 Co. 17.

Common Appurtenant may be created at this Day, by Grant or Prescription, in Right of any new arable Land, Meadow, or House; but Common Appendant must be of ancient arable Land, and cannot be at this time created.

If a Lord of a Manor grant a Messuage for three Years, with Common for ten Beasts every Year, by this the Grantee will not have  
Power,

Power, on forbearing, to use the Common for two Years, to put thirty Beasts in the last Year; for thereby the Common would be surcharged. *Finch. 85.*

No Commoner can take the Grass that grows on the Common, any otherwise than by depasturing it; nor can he meddle with the Soil; but if the Owner of the Soil set up a Hedge on the Common, to keep out the Commoner, he may throw it down. *15 H. 7.* A Commoner may not kill Conies of the Lord in the Common no more than great Beasts; but when they go out, the Lord hath no Property in them.

The Property of the Soil in the Common is entirely in the Lord, but the Use of it jointly in him and the Commoner; so that together they may do any Acts whatsoever; and the Lord may enclose part of the Common, without the Concurrence of the Commoner, which is called Approvement or Improvement of Common; but he is to  
leave

leave sufficient Common for the  
Commoners. 20 H. 3.

If a Commoner sell part of the  
Land, to which his Common Ap-  
pendant appertains, he shall have  
Common *pro Rata*, with respect to  
what is Let; and if part of the Land  
on which the Commoner has Right  
of Common descends, if the Com-  
mon were certain it shall be appor-  
tion'd, but not if it be uncertain.  
*Co. Lit.* 149.

Where two Commons ly open  
one to another, by which the Cat-  
tle of the several Commoners stray  
into the Common of the other,  
this is called Common in Vicinage;  
and each being equally Trespassers,  
if they forbear to prosecute one  
another, in Process of Time, and by  
Custom the Right of Action is taken  
away; and the Tenants that have  
Right of Common may at any  
time enclose their Common, and  
thereby the Vicinage is gone. *Co.*  
*Lit.* 122.

The

The Writ for Admeasurement of Common lies for one Commoner against another, but not for the Lord against his Tenant, nor for the Tenant against his Lord; and it seems to lie only where the Common is Common Appendant. *F. N. B.* 125.

Though Tenants may take Common of Estovers, yet the Tenant must be careful not to cut more Wood than he has occasion for; the Wood for Fire-wood must be consum'd in the Housing on the Land leased; the House-wood must be used for Repairs of such Housing only; the Hedge-wood on the Estate, &c. or the Tenant will be guilty of Waste. *Co. Lit.* 41.

*of Waste.* The word *Waste* in a legal Sense, signifies Acts of Destruction by Tenants in Possession of Lands or Houses, to the prejudice of those in Reversion or Remainder; and Impairation of a thing out of its proper Use is Waste; for Waste is the illegal Use of a thing which the

the Party hath a legal Right to use in its natural and proper manner.

To suffer Houses to decay is Waste, and though there be no Wood upon the Premises, yet the Tenant is obliged to make good the Repairs; to pull down a House in the whole or in part, (unless the same be ruinous, and in order to the rebuilding, of the same Dimensions) is Waste. *1 Inst. 52.*

To suffer a House to be burnt by Negligence or Mischance, or if the same be uncovered by Lightning, &c. and the Tenant do not repair it in due Time, these are Waste. *Kelm. 87.*

But if a House be destroy'd by Lightning, Tempests, or Enemies, without any possibility of the Lessee's preventing the same, this is not Waste in the Lessee. *1 Inst. 53.*

Where a Lessor covenants to repair a House, and neglects it, and the Tenant repairs the same for his  
Con-

Conveniency, by the best Opinions he may deduct the Money expended, out of his Rent in Arrear; but some are of Opinion that if the Lessor do not repair, the Lessee must bring Action of Covenant against him, and have his Remedy that way. 12 H. 1. Cro. Eliz. 222.

The taking away or breaking down Wainscot, Doors, Windows, Benches, Coppers, &c. fixed to the Freehold, is Waste; but some of our Books make a Distinction where they are fixed by the Lessor, and when fixed by the Lessee; for if they are set up by the Lessee, *Salkeld* tells us they may be taken down by such Lessee before the end of his Term, so as he do not thereby weaken the Freehold, but leave the same in as good Plight as it was at the Time he fixed them. *Salk.* 368. 20 H. 7.

The Felling of Timber-Trees, whether Oak, Ash, or Elm, or other Trees, in some Counties reputed

ted Timber, to Sell, or any other Intent but for Repairs of the House, it is Waste; if for building a New House, the same is Waste; to cut young Trees for Reparations, where there is other Timber; and to cut down Underwood, and suffer the Cattle to crop it, is Waste. 1 *Inst.*

53.

To cut Beech-Trees, Willow, &c. planted for the fencing a Manor, Mansion-house, &c. is Waste. The cutting down of Fruit-Trees, however impair'd, it is Waste, if they grow in a Garden, or Orchard, though the same be used in Reparations of the House, &c. But it is otherwise if they grow in a Field, &c. To cut down green Trees when there are dry ones, or more Fireboot, &c. than is necessary, is Waste: And Trees that will never be fit for Timber, dry and dead Trees, &c. may be cut for Fireboot. 1 *Inst.* 53, 88, &c.

The Ploughing of Lands that hath not been ploughed up time out

out of Mind, is Waste; it is also Waste to plough up Wood-lands; but the letting arable Lands ly unplowed, is not Waste, though thereby they are overspread with Thorns and Weeds. Not keeping in Repair of Banks, whereby the Water overflows the Land, is Waste; but if such overflowing proceed from an uncommon rising of Floods, it is not Waste. *Dyer*

37.

To dig any Mines of Metal, Coals, &c. or Quarries of Stone, Gravel, &c. or any thing enclos'd in the Earth, without a particular Clause in the Lease, enabling the Tenant to do it, is Waste; but if a Mine be open, the digging in it, or digging of Gravel for Repairs, is no Waste; and the Lessee may dig Mines where the Lease is made of Lands, with the Mines; though if at the Time of making such Lease, Mines are open, it will extend to them only. *1 Inst. 53. 5 Co. 11.*

De-

Destroying Deer in a Park, or enclos'd Ground; Fish in a Pond, &c. or any thing by which the Lessor is abridged of the Annual Profits, are Waste. But if the Tenant have Lands granted him to hold without Impeachment of Waste, the Tenant is under no Restraint from committing it, and he may pull up, or cut down Wood, or Timber, &c. or dig Mines, &c. at his Pleasure, and not be liable to any Action. *Plowd. 135.*

An Action of Covenant may be brought by the Lessor against an Assignee, though not named in the Lease, if the Covenant be for the Benefit of the Estate, as to leave Land untill'd, &c. But it is otherwise of Covenant for the building of a House, &c. *2 Cro. 125.*

*Actions of  
Covenant,  
&c.  
by Land-  
lords.*

Debt for Rent will not lie against Lessee after accepting the Assignee for Tenant; but it has been adjudged Covenant to repair may be brought; and Covenant also for the Rent, where there is a Covenant to pay it. *1 Brownl. 20.*

An

## The Laws relating to

Covenant don't lie for want of Reparations, if there has been once a Recovery on an Action brought, notwithstanding the Decay be after that Recovery had, for that Covenant is extinct. 3 Leon. 51.

An Action of Covenant lies for the Grantee of the Reversion only for want of Repairs after the Grant, and not before. Nor for breach before the Assignee's Interest. 1 Cro. 363.

But if the Lessor be to repair, and the House become ruinous before his Interest commenced, the Assignee may maintain Action of Covenant to repair; and the Assignee of the Reversion, notwithstanding the Termor's Assignment over, and the Assignee is accepted Tenant to the Assignee, may maintain Covenant against the first Lessor for not Repairing. Godb. 270.

If the Lessee covenant with the Lessor, and his Executors, to repair, but the Heir is not named, yet shall he be entitled to Action of

Covenant, for 'tis a Covenant that runs with the Land. *2 Levins.* 92.

If a Plaintiff declare for Rent as Executor, he must set forth the Testator's Estate; for if it be a Freehold Estate, the Executor is not entitled to it, but the Heir, as incident to the Reversion. *2 Cro.*

*117.* In Declaration in Debt for Rent, the thing demised must be certainly set forth; the Commencement of the Term be precisely alledged; it must appear that the Defendant had a Title of Entry; the Plaintiff is to shew the exact Sum due, how much of it paid (if any) and it must be apparent that the Plaintiff is entitled to the Rent; but this need not be set forth only by way of Recital. *Style 393. Cro. Vent.*

*129.* No Promise shall be presumed in Action of Debt for Rent, &c. The Plaintiff must prove a Consideration, and an actual Promise to pay.

But

But where Lodgings are let with Furniture, this being called Hiring, and not Renting, as the Furniture is the most valuable part, in Intendment of Law the Money paid is supposed to be for the Use of the Goods; and in Action upon the Case on a Promise, the Proof of the Consideration is effectual without Evidence of an actual Promise. *Sid.* 279. 1 *Lev.* 179. 3 *Mod.* 73. *Style* 53.

By Stat. 8 & 9 *W.* 3. In all Actions commenced in any of the Courts of Record upon any Bond, &c. or on any penal Sum for Non-performance of Covenants in any Indenture, Deed or Writing, the Plaintiff may assign as many Breaches as he shall think fit, and the Jury upon trial of the Action may assess Damages and Costs, not only what have been usual heretofore, but also Damages for such of the Breaches so assign'd, as the Plaintiff shall prove to have been broken; and Judgment shall be entered

tered on such Verdict as heretofore in such Actions. See the Act.

Actions brought by Tenants relate chiefly to the quiet Enjoyment of the Lands which are let to them, or to Encroachments and Nuisances.

*Actions brought by Tenants.*

The Lessee by Covenant in Law is to enjoy his Lease against the lawful Entry, Eviction or Interruption of any Man; but not against tortious Entries, Evictions, &c. because against tortious Acts, the Lessee hath proper Remedy against the Transgressors: If the Lessor lease the Term by Deed-Poll, and afterwards ousts the Lessee, he shall have Writ of Covenant, although he hath no Indenture; but if a Stranger, who hath no Right, evicts the Lessee, then he shall not have Covenant against the Lessor, for he hath remedy by Action against the Stranger; but it is otherwise if the Stranger enter by elder Title.

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IF

If the Lessee hath express Covenant to enjoy his Term against all Men, he shall not have an Action against the Lessor, unless he be legally ejected; for if he be ousted tortiously by a Stranger, he hath his Remedy against the Interraptor. *Vaughan's Rep. Case of Hayes and Bickerstaff.*

An Action of Covenant cannot be maintained on a Bond, conditioned for quiet Enjoyment, unless the Breach be assigned for a lawful Entry or Eviction: A Man bound by Covenant in Law, that his Lessee should enjoy the Term, gave Bond for Performance of Covenants; in an Action of Debt brought upon the Bond, the Breach was assigned that a Stranger had recovered the Land in *Ejectione firme*, and had Execution; though this Eviction were by Course of Law, yet for that an elder and sufficient Title was not set forth, whereupon the Recovery was had, it was adjudged no Breach of Covenants. *Nokes's Case.*

A Tenant having Right of Common may have Action on the Case, or an Assize for stopping of his way to the Common. *Dyer* 250.

In case of stopping of Lights, if a Man has a Piece of Ground, on which he erects a House, with very good Lights, and grants a Lease of the same to another; and after he build upon a contiguous Piece of Land, or lets such Land to another Person, who builds thereupon, to the Nuisance of the Lights of the first House; the Lessee of the first House shall have Action upon the Case against such Builder, &c. for the first House was granted to him with all Lights, Basements, &c. *Mod. Cases*, 116.

But if a Stranger has Land adjoining to a new built House, he may erect a House, and there's no Remedy though the Windows of the first built House are thereby darkened; but 'tis otherwise if the first House be an ancient House, that has ancient Lights, for in this case Prescription will alter it. *Lev.* 122.

And where a House has been built twenty or thirty Years only, another Person may build a House upon Land adjoining, (as it is his own Land and Soil) against the Lights and Windows, and the other can have no Remedy; for it shall be adjudged his Folly to build so near the other's Land. 1 *Leon.* 168.

In Action upon the Case for stopping of Lights, the Plaintiff declares he was possessed for many Years, without saying how many, and that Time out of Mind, the Light came in at the Windows; and it was allow'd to be a good Prescription. 1 *Vent.* 248.

In Leases of Lands, Houses, &c. Covenants are always inserted for the mutual Benefit of Landlord and Tenant, whereby Quarrellings and Disputes are frequently prevented; but a Lease is good without any Covenant at all. *Lev.* 280. *Co. Lit.*

*A Lease of a House for a  
Term of Years.*

**T**HIS Indenture made, &c.  
Between A. B. of, &c. Gent.  
of the one Part; and C. D. of, &c.  
of the other Part; Witneseth, That  
the said A. B. for and in Confide-  
ration of the yearly Rent and Co-  
venants hereinafter reserved and  
contained on the part and behalf  
of the said C. D. his Executors,  
Administrators and Assigns, to be  
paid, observed and performed,  
Hath demised, granted, and to Farm-  
letten, and by these Presents doth  
demise, &c. unto the said C. D.  
All that Messuage or Tenement,  
commonly called or known by the  
Name of, &c. situate in, &c. now in  
the Possession of, &c. with all and  
singular Ways, Waters, Lights,  
Easements, and Appurtenances  
whatsoever, to the said Messuage  
or Tenement belonging or in any

wise appertaining, or therewith  
 now held, used, occupied or en-  
 joyed, together with the Use of the  
 Goods following, viz. &c. To have  
 and to hold all and singular the  
 said Messuage or Tenement, and  
 Premises above-mentioned, with  
 the Appurtenances, unto the said  
 C. D. his Executors, Admini-  
 strators and Assigns, from, &c. last  
 past, for and during the Term of  
 21 Years thence next ensuing,  
 and fully to be compleat and end-  
 ed, Yielding and Paying therefore  
 yearly during the said Term, unto  
 the said A. B. his Heirs and Assigns,  
 the yearly Rent of, &c. in and upon  
 the 25th Day of June, the 25th Day  
 of September, the 25th Day of Decem-  
 ber, and the 25th Day of March, by  
 even and equal Portions. And if  
 it shall happen the said yearly Rent  
 above reserved, or any Part there-  
 of, to be behind and unpaid, in  
 Part or in all, by the Space of 21  
 Days next after any or either of the  
 said Days appointed for the Pay-  
 ment

ment thereof, Then and from  
thenceforth it shall and may be  
lawful to and for the said A. B.  
his Heirs and Assigns, into  
the said Premises to re enter, and  
the same to have again, repossess  
and enjoy, as in his and their first  
and former Estate, any thing here-  
in contained to the contrary there-  
of in any wise notwithstanding.  
And the said C. D. for himself, his  
Executors, Administrators and As-  
signs, doth covenant and grant  
to and with the said A. B. his  
Heirs and Assigns, That he the  
said C. D. his Executors, Ad-  
ministrators or Assigns, shall and  
will well and truly pay or cause  
to be paid unto the said A. B.  
his Heirs and Assigns, the said year-  
ly Rent above reserved, at the Days  
and Times, and in manner and form  
above expressed, clear of, and over  
and above all Taxes, Rates, and  
Payments whatsoever, (except the  
Land Tax, &c. charged by Act of  
Parliament, and payable to the

## The Law relating to

King's Majesty, his Heirs and Successors.) And also that he the said C. D. his Executors, Administrators or Assigns, shall and will at all Times during the said Term hereby granted, well and sufficiently repair, uphold and keep the said Messuage or Tenement hereby demised, in all needful and necessary Reparations whatsoever, when and as often as need shall require, and the same so well and sufficiently repaired and kept at the End, Expiration, or other sooner Determination of the said Term hereby granted unto the said A. B. his Heirs and Assigns, shall and will leave and yield up, And shall and will then also leave unto the said A. B. her Heirs and Assigns, all the said Goods, &c. above-mentioned, in as good Plight and Condition, as they are now in, the reasonable Usage of them, and the Casualty of Fire in the mean Time only excepted. And the said A. B. for himself, his Heirs and Assigns, doth

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covenant and grant to and with the said C. D. his Executors and Administrators, That he the said A. B. his Heirs or Assigns shall and will bear and discharge, or deduct, abate and allow out of the said yearly Rent above reserved, all Taxes laid on Lands by Act of Parliament, &c. And also that he the said C. D. his Executors, Administrators and Assigns shall and may, by and under the yearly Rent and Covenants herein reserved and contained, peaceably and quietly have, hold, occupy, possess and enjoy all and singular the said Messuage or Tenement, and Premises above-mentioned, with the Appurtenances, for and during the said Term hereby granted, without the Let, Trouble, Hindrance, Molestation, Interruption and Denial of him the said A. B. his Heirs and Assigns, or of any other Person or Persons claiming or to claim, by, from or under him, them, or any of them. In Witness, &c. K 5 N. B.

N. B. If it be a Lease of a Farm in the Country, at a Rack-Rent, after the Tenant's Covenant for Repairing the Mounds, Bounds and Fences, you are to add the following Covenants.

And also that he the said C. D. his Executors, Administrators or Assigns, shall and will imploy all the Muck, Dung and Soil that shall be made by Horses, Cattle, &c. in and upon the said demised Premises, or some part thereof, where most need shall be and require. And that the said C. D. his, &c. or any or either of them, shall not at any time during the said Term, do, make or commit, or cause or procure, permit or suffer, &c. any manner of Waste or Destruction, in and upon the said demised Premises, or any part thereof, of or in the Trees, Woods, Underwoods, &c. And also that he the said C. D. his, &c. shall not at any time during the said Term, cut, fell, lop

lop or top any of the Trees, Wood or Underwoods now growing, or which shall at any time hereafter during the said Term, stand or grow in or upon the said demised Premises, or any part thereof, but only for repairing of the Housing, Hedges, Gates, Stiles, &c. by the Consent and Assignment of the said A. B. his, &c. And lastly, It is covenanted and agreed, &c. That it shall and may be lawful to and for the said A. B. his, &c. at all and every Time and Times, proper and convenient, within the last Year of the said Term, to enter into and upon so much of the arable Land belonging to the said demised Premises, as in the same Year shall be necessary to be fallow'd, and to ear, plough up and fallow the same, according to the Usage of the Country in that behalf, without any Let or Disturbance of the said C. D. his, &c. or of any other Person or Persons, by his or their, or any

est

**The Laws relating to**  
of their Means, Assent or Procurement. In Witness, &c.

*A Chattel-Lease for 99 Years,  
if three Lives so long live.*

**T**HIS Indenture made, &c.  
Between A. B. of, &c. Esq;  
of the one Part; and C. D. of, &c.  
of the other Part; Witnesseth,  
That the said A. B. as well for  
and in Consideration of the Sur-  
render of a former Lease granted  
by, &c. unto the said C. D. of the  
Messuage or Tenement, and Pre-  
misses hereinafter mentioned for the  
Term of 99 Years, determinable on  
the several Deceases of the said  
C. D. and, &c. as also for and in  
Consideration of the Sum of, &c.  
to him the said A. B. in Hand  
paid by the said C. D. the Receipt  
whereof the said A. B. doth here-  
by confess and acknowledge, He  
the said A. B. hath demised, grant-  
ed, and to Farm-letten, and by  
these

these Presents doth demise, &c. unto the said C. D. All that Messuage or Tenement, &c. situate, &c. now or late in the Tenure of, &c. (Excepting and always reserving out of this present Demise and Grant to the said A. B. his Heirs and Assigns, all Timber-Trees, and Trees fit and proper to be raised and preserved for Timber-Trees, &c. now standing, growing or being, or which shall hereafter stand, grow, or be in or upon the said Premises, or any Part thereof, with free Liberty to fell, cut down, take and carry away the same at all seasonable Times) To have and to hold the said Messuage or Tenement, Lands and Premises above-mentioned, and every Part and Parcel thereof, with the Appurtenances (except before excepted) unto the said C. D. his Executors, Administrators and Assigns, from the Day of the Date of these Presents, for and during and unto the full End and Term of 99 Years, from thence  
next

next ensuing, and fully to be compleat and ended, if he the said C. D. E. his Wife, and T. his Son, or any or either of them shall so long happen to live. Yielding and paying therefore yearly, during the said Term, unto the said A. B. his Heirs and Assigns, the Rent of, &c. at and upon the Feasts of the Annunciation of the blessed Virgin Mary, and St. Michael the Archangel, by even and equal Portions. And also yielding and paying at and upon the Death or Decease of the said C. D. &c. the best Beast or Goods of the said C. D. or in lieu thereof the Sum of, &c. in Money, at the Election of the said A. B. his Heirs and Assigns, for and in the Name of an Heriot, &c. And also doing Suit and Service to and at all and every the Court and Courts of the said A. B. his Heirs and Assigns, to be from time to time during the said Term holden in and for the said Manor, of, &c. and there be ordered and justified in

in all things touching the said Promises, as other the Tenants of the said Manor for their respective Estates are, shall or ought to be: All which Rents, Heriots, Reservations, Clauses and Agreements, which on the Part and Behalf of the said C. D. his Executors, Administrators and Assigns, are and ought to be paid, yielded, done, observed, performed and kept, he the said C. D. for himself, his Executors, Administrators and Assigns, doth hereby covenant, promise, grant and agree to and with the said A. B. his Heirs and Assigns, well and truly to yield, pay, do, observe, perform and keep, according to the true Intent and Meaning of these Presents. And if it shall happen the said yearly Rent, or Sums of Money for Heriots, or any Part thereof, to be behind and unpaid by the Space of 21 Days next after either or any of the said Days, or Times of Payment, on which the same ought to be paid

as aforesaid (being lawfully demanded) and no sufficient Distress or Distresses in or upon the said Premises can or may be found, whereby the same may be levied, That then and from thenceforth it shall and may be lawful to and for the said *A. B.* his Heirs and Assigns, into the said Messuage or Tenement and Premises hereby demised and granted, with the Appurtenances, to re-enter, and the same to have again, repossess and enjoy, as in his or their former Right and Estate, any thing herein contained to the contrary thereof notwithstanding. And the said *C. D.* for himself, his Executors, Administrators and Assigns, doth covenant and grant to and with the said *A. B.* his Heirs and Assigns, That he the said *C. D.* his Executors, Administrators and Assigns, at his and their own proper Costs and Charges shall and will from time to time, and at all times during the said Term hereby granted,

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ed, well and sufficiently repair, maintain, sustain, uphold, amend and keep the said Messuage or Tenement and Premises hereby demised, and every Part and Parcel thereof, with the Appurtenances, in and with all manner of needful and necessary Reparations whatsoever, when and as often as need shall require, And the same so well and sufficiently repaired, maintained, sustained, upheld and kept at the End, Expiration, or other sooner Determination of the said Term hereby granted, unto the said A. B. his Heirs and Assigns, shall and will peaceably and quietly leave and yield up. And the said A. B. for himself, his Heirs and Assigns, doth covenant and grant to and with the said C. D. his Executors, Administrators and Assigns, That (for and under the yearly Rent, Heriots, Covenants and Agreements before in and by these Presents mentioned and contained) he the said C. D. his Executors,  
Ad-

Administrators and Assigns, shall and may during the Term hereby granted, peaceably and quietly have, hold, use, occupy, possess and enjoy the said Messuage or Tenement, and Premises above-mentioned, and every Part and Parcel thereof, with the Appurtenances, (except before excepted) without the Let, Suit, Trouble, Interruption Hindrance or Denial of the said A. B. his Heirs or Assigns, or of any other Person or Persons whatsoever, lawfully claiming or to claim any Right, Title or Interest, from, by or under him, them, or any or either of them. In Witness, &c.

A Freehold Lease for three Lives differs from a Chattel-Lease only in this, That the *Habendum* is to the Lessee, his Heirs and Assigns, (and not Executors, Administrators and Assigns) for and during the natural Lives of him the said C. D. E. his Wife, and F. their Son, and for and during the Life Natural of every

every and either of them longest living; and it is not very usual on these Leases to have Heriots reserved. In every Covenant, the Lessee covenants for himself, his Heirs and Assigns, and the Covenants are generally the same, as in a Chattel Lease; with the Addition of a Letter of Attorney, at the end to deliver Possession, as in the Deed of Feoffment in the beginning of this Chapter; and Livery of Seisin is thus delivered. If Land, the Owner in Possession cuts a Turf, if Wood, a Twig or Bough, and if a House, puts his Hand on the Lock, and delivers it to the Attornies, or one of them, who deliver it to the Lessee; saying, "I A. B. do hereby deliver unto you C. D. Possession and Seisin of this House, &c. in the Name of the Rest contained in this Deed (being in the House, and having the Lease in his Hand) To hold to you, your Heirs and Assigns, according to the intent and meaning

## The Laws relating to

“ing of the Indenture of Lease. And then the Livery of Seisin; is endorsed, which perfects the Estate to the Purchaser.

## Of Copyhold Estates, Grants, Surrenders, &c.

**A** Manor, Lands, Herbage of Lands, a Fair, Mill, &c. and any thing that concerns Lands may be granted by Copy of Court-Roll. *Co. Lit.* 58. But if a Lord leases a Copyhold Estate for any certain Time, the Copyhold Estate is extinguished, and cannot be afterwards re-granted by Copy; but if such Lease be made by Tenant for Life, then is the Copyholder during his Life only in Suspence, and his Estate is reviv'd on the Descent to the next Heir. *2 Sid.* 35.

If a Copyholder accept a Lease for Years of the Lord of the same Land he holds by Copy, the Copyhold is extinguish'd; but by a Lease

Lease of the Manor, the Copyhold is only suspended, and revives again on the Determination of the Lease. 4 Co. 31. Lane 16. Godb. 11.

A Lord of a Manor may grant a Copyhold out of his Manor, but his Steward has not this Power; and all Persons who have a lawful Estate in any Manor, whether by Statute-Staple, or Tenants at Will, Guardians, Tenants in Dower, &c. may make Grants of Copyholds, even in Reversion, if warranted by Custom. Co. Lit. 58.

But Tenants at Sufferance, and all Persons that are in Possession of a Manor illegally, can make no Grants that will be binding to the lawful Owner. Ibid.

As Copyholds are granted by the Lord or his Steward, so on Alienation must they be surrendered into the Hands of the Lord, either in Person, or by Attorney.

And a Surrender may be made to the Lord or his Steward; either in or

out of the Manor, without a particular Custom; but a Surrender to a Bailiff and two customary Tenants is not good, without a particular Custom to warrant it. A Feme-Covert is to be secretly examin'd by the Steward on her surrendring of her Estate. *Co. Lit.* 59.

Surrenders made out of Court are to be presented at the next Court, where they are to be found by the Homage, and entred by the Steward on the Rolls: And such Presentment must exactly pursue the Surrender, or the same will be void; but if it be after the Copyholder's Death rightly done, it will be good and binding. *Co. Lit. Ibid.*

Though a Copyhold Estate may not be transferred otherwise than by Surrender, yet a Right to a Copyhold may be extinguished by the Release of him that hath the Right to the Person in Possession.

*Ibid.*

*The Form of a Surrender in Court.*

**I** A. B. do Surrender and yield  
up into the Hands of C. D.  
Esq. Lord of this Manor, all that  
Messuage and Tenement, with the  
Appurtenances, within this Ma-  
nor, now in the Possession of,  
&c. And all my Estate, Right, Ti-  
tle, Interest, Possession, Reversi-  
on, Claim and Demand, of, in  
and to the same, to the end the said  
Lord may do therewith his Will,  
and in Token thereof, I deliver up  
this Verge, (delivering to the Ste-  
ward a Pen, put into his Hands  
for that purpose.)

After a Surrender is entred and  
presented, the Estate is in the Sur-  
renderor till Admittance of the Sur-  
rendree; but as soon as the Sur-  
rendree is admitted he shall be said  
to be in from the Date of the Sur-  
render.

render. Yet if the Lord accept Rent of the Surrendree before the Admittance had, this amounts to an Admission in Law, the Rent being due to the Lord, only from a Tenant. *Bridg. 214. Poph. 127.*

An Heir to Copyhold in Fee may enter and take the Profits before Admittance; but the Lord may nevertheless seize, if he do not come in to be admitted on Proclamation made in Court: And 'tis a discretionary Act in the Lord to admit any one by Attorney, or not, because the Tenant ought to do Fealty, which cannot be done by Attorney. *4 Co. 22: 9 Co. 76.*

If a Copyholder surrenders to one for Life, Remainder to another, and the Surrendree is admitted, this is an Admission to him in Remainder. *4 Co. 22.*

If a Surrender be made to one who hath a particular Estate in a Manor, and this Estate determines before the Admittance, the next Lord is compellable to make it; for the

the Lord is but the Instrument, and nothing passes out of him, but to answer the purposes of the Surrenderor, by whom the Surrendree shall be said to be in; and if the Lord admit the Surrendree to a larger Estate than mentioned by the Surrender, yet no greater Estate shall be passed to him. 4 Co. 28.

Copyholders hold their Estates free from Charges of Dower, (tho' the Admission be subsequent to the Title of Dower) by reason Copyhold Estates are created by Custom, which is paramount to Title of Dower. 4 Co. 24.

Copyhold Tenants refusing to do Suit of Court, after Personal Summons; refusing to make Presentments, after sworn on the Homage; to pay Rent to the Lord, being demanded on the Land at the Day due; not coming in to be admitted on the third Proclamation, the Lands being particularly named; making a Lease for a longer Time than the general Custom will warrant; pulling down a House, after

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erected

erected by the Copyholder, &c. committing Waste in cutting down Timber-Trees, &c. are Forfeitures of Copyhold Estates; and most Forfeitures are caused by Acts contrary to the Tenure. The Lord of the Manor, though but *Dominus pro tempore* is entitled to Forfeitures.

**A Grant by Copy of Court-Roll.**

**Maner' de A. Ad Cur' Baron' Thoma**  
**L. Ar' Dom' Manerii præd'**  
**Tent' pro Manerio præd' De-**  
**cimo tertio die Octobris Anno**  
**Regni Dom' nostri Georgii Dei**  
**Gra' Magn' Britan' Franciæ &**  
**Hiberniæ Regis Fidei Defen-**  
**soris', &c. Quinto Annoq; Dom'**  
**1719. Coram Willielmo B. Gen'**  
**Seneschal' ibid' inter alia Irro-**  
**tulatur ut sequitur.**

**A**D hanc Cur' venit Johannes  
W. & cepit de Dom' Manerii  
præd' ex traditione seneschal' præd'  
un' Tenement' ac quadragint'  
acr' terr' prat' & pastur' cum per-  
tin' infra Maner' præd' nuper in  
tenur' Willielmi S. Defunct' Ha-  
bend' & Tenend' Tenement' ac qua-  
dragint' acr' terr' præd' cum omni-  
bus & singulis suis pertin' præfat'

## The Law relating to

Johanni W. necnon Johanni & Thomæ fil' ejus pro termino vitar' eor' & eor' alter' diutius successive viven' ad voluntat' Dom' secund' consuetud' Maner' præd' Per Redd' inde per Annum 4 s. 6 d. Ac pro Herriot' cum accid' trigint' solid' Ac per omnia alia Redd' onera opera Sect. Consuetud' & Servic' inde prius debit' & de jure Consuet' ac pro tali Stat' & ingru' sic in præmiss' Habend' præfat' Johannes W. Dat' Dom' de Fine Nonaginta libras præ manibus solut' Et sic admitt' est inde Tenen' & fecit Dom' fidelitat' sed fidelitat' alior' respectuantur quousque, &c. Dat' per Copiam Rotulor' præd' Cur' Die & Anno prius supradict'.

T. L.

Examinat' & concordat'  
cum Rotul' Cur'

Per me Will' B. Seneschal ibid'

A

A Surrender of Copyhold  
Lands, and new Grant,  
with Licence to demise,  
&c.

Maner' de A. *Ad Cur' Baron' Thomæ*  
*L. Ar' Dom' Manerii præd'*  
*Tent' pro Manerio, &c.*

**A**D hanc Cur' venit Willielmus  
S. qui clam' tenere pro ter-  
mino vit' suæ & vitar' Willielmi  
& Mariæ fil' ejus per Cop' Rotulo-  
rum Cur' Maner' ibid' geren' dat',  
&c. Unu' Claus' pastur' sive arr'  
voc', &c. cont' per estim' vigint'  
& octo acr' cum Domo nuper erect'  
super claus' præd' cum pertin' infra  
Maner' præd' Et illa omnia & sin-  
gula ac tot' inde Stat' titul' Interess'  
possessionem Reversionem clam' &  
Demand' tam ipsius Willielmi le  
pat' quam ipsius Willielmi & Mariæ  
fil' ejus & cujuslibet eorum (unacu'

## The Laws relating to

Cop' inde fact' cancelland' ) ipse  
 Willielmus S. le pat' ( sol' præ-  
 missor' perquisitor' existen' ) in ma-  
 nus Dom' in præd' Cur' sursu' redd'  
 ut Dom' inde faceret voluntat' su'  
 unde accid' Dom' un' Her' quod in-  
 cludit' in Fine subscript' Super quo  
 in ista eadem Cur' vener' præfat'  
 Willielmus le pat' & Willielmus fil'  
 ejus & ceperunt de Dom' in præd'  
 Cur' omnia & singul' præmifs' præd'  
 cu' su' pertinen' Habend' & Tenend'  
 omnia & singul' præmifs' præd' cu'  
 pertin' præfat' Willielmo S. le pat'  
 & Willielmo fil' ejus necnon Annæ  
 fil' præd' Willielmi S. le fil' pro  
 termino vitarum eorum & eorum  
 alter' diutius successive viven' ad  
 voluntat' Dom' secund' consuetud'  
 Maner' præd' Per Redd' inde per  
 Annum 10 s. ac un' Heriot' cum  
 accid' ac per Omnia al' Redd' one-  
 ra opera sect' consuetud' & servic'  
 inde prius Debit' & de jure consuet'  
 Ac pro tal' Stat' & ingr' sic in præ-  
 mifs' Habend' præfat' Willielmus S.  
 le pat' & Willielmus le fil' dant  
 Dom'

Dom' de Fine quinquagint' libr' præ  
 manibus solut' Et sic præd' Williel-  
 mus le pat' Admifs' est inde Tenen'  
 & fecit' Dom' fidelitat' su' sed fide-  
 litat' dicti Willielmi le fil' & Annæ  
 respectuantur quousq; &c. Et ul-  
 terius Licentia concess' est præd'  
 Willielmo le pat' & Willielmo fil'  
 ejus ad dimittend' præmiss' præd'  
 cum su' pertinen' Thomæ L. de,  
 &c. Executorib' Administratorib' &  
 Assignat' suis pro termino Vigint'  
 & un' Annor' nunc prox' sequen'  
 si ipsi Willielmus S. le pat' Wil-  
 lielmus le fil' & Anna S. vel aliquis  
 eorum tandiu vixerit Ita quod Do-  
 mus sepes Fossat' & al' Fensur' præ-  
 missor' de tempore in tempus bene  
 & sufficien' Reparentur & Includan-  
 tur Et Redd' onera opera Sect' con-  
 suetud' & servic' inde Dom' debet  
 bene & fidelit' reddantur & persol-  
 vant' Alit' hæc Licentia vacua erit.  
 Dat', &c.

*The Laws and Statutes relating to Tithes, as far as they concern Tenants, &c.*

**A**S the Laws and Statutes relating to Tithes very much concern Tenants and Farmers of Estates; that they may know the Demands of the Parson out of their Annual Products, and the Obligations they lie under in all these Cases, I shall conclude this Treatise, with some Notice thereof.

Tithe, (being a tenth Part,) of Corn, Hay, Wood, Herbs, and all other things, that either come from the Ground by Manurance, or of its own Nature, and annually encrease, is payable to the Parson. Tithes are also paid for Agistment of Cattle, Pigs, Calves, Lambs, Wool, Milk, Cheese, Pigeons, Geese, Ducks, Bees, &c. But things *feræ Naturæ*, as Deer, Hares, Conies, Fish,

Fish, Partridge, &c. out of Custody, are excused from the Payment of Tithes. *Cro. Car.* 339.

If there be two Crops of Hay, &c. produc'd on Lands in one Year, the Parson shall have Tithe of both; but not of After-maths of Meadows, nor Rakings of Corn. *Yelv.* 86. Neither shall Tithe be paid for Grass cut in Meadows, to feed the Beasts of the Plough, not made into Hay; nor for Grass growing upon Head-Lands, which are only large enough for the turning of the Plough. Or for Green Pease, spent in a Man's House; but if they are gather'd to sell or feed Hogs, Tithe shall be paid. *1 Roll.* 646, 647.

Tithe is due for Hay and Corn growing in Orchards, tho' Tithes for the Fruit be at the same time paid. The Tithe of Herbage, or Agistment of Cattel is due, where the Owner or Farmer of any Lands, depastures the same with barren Cattel that yield no Profit to the Parson; which is a tenth Part of the yearly Value of the Ground so,

## The Laws concerning

fed, or less, according to Custom.  
*Hardres* 184.

But no Herbage-Tithe shall be paid for the Agistment of Beasts bred for the Plough or Pail, and so employed in the same Parish; nor for Beasts fed and spent in the Owner's House. And if a Man eat a Ground with his own Saddle-Horses, he shall pay no Tithe for the same; but if an Inn-keeper eat the Herbage with the Guests Horses, he shall pay Tithes. So shall Persons working Cattle in the Plough fraudulently. *Hardres* 114. *Poph.* 126.

For the Grass of Fallows, and of Stubble, no Herbage-Tithe shall be paid, because it is for the bettering of the Parson's Tithes the Year following, by feeding with Cattle, &c.  
*7 Jac. C. B.*

Oxen, milch Cows, Lambs, and all Cattle bred for the Plough and Pail, are profitable Cattle to the Parson; for though no Tithe-Herbage is due for them, yet are others Tithes payable, &c. A Tithe of

Milk is paid in Cheese whilst the Parishioners make it, and in kind in the Winter; and where the Milk is so little that it will not make Cheese; or Calves, Lambs, &c. are so few in Number, that there will none fall to the Parson, there is no Rule in Tithing, but the same is referred to the Custom of the Place.

The Payment of Tithes of Wool, and Lambs is thus settled by the Canon. If the Parishioners have under seven Lambs or Fleeces, they are to pay a Half-Penny for every Lamb and Fleece; and if there be seven Lambs or Fleeces, and under ten, then the Parson is to allow a Half-penny for every one that is wanting, &c. *Latch. 254.*

If a Man's Sheep die of the Rot, or other Disease, or if the Owner kill or sell them, he must pay Tithe for the Wool ratably; where Sheep lodge in one Parish, and depasture in another, or Cows feed in one Parish, and lodge in another, the  
Tithes

## The Laws concerning

Tithes are to be divided between the Rectors of both Parishes. But if Sheep be kept less than thirty Days in any Parish, no Rate is to be allow'd the Rector of that Parish where they are kept so small a Time.

Tithes of Lambs, Calves, &c. are to be apportioned with respect to the Places where they were brought forth; the time of Payment is regularly when they are sold, or are weaned that they live without the Dam; and Tithe of Wool is to be paid at Shear-Day; but Tithe is not payable for Locks and Belts. *Cra. El. 363.*

By the Canon Law where there is no Customary manner of Tithing of Pigs, Geese, Calves, Colts, &c. where they fall short often, the tenth part of the Value is to be paid.

Tithes are paid for Fruits arising in Orchards and Gardens in their kind, when gather'd, unless there be some Tithe-Rate paid in lieu of it; and so of the Seed of Flax, Hemp, &c. And a Tithe of Bees

is to be paid, viz. the tenth part of the Honey and Wax. *Co. 11. 49. Lit. Rep. 4. Jones 447.* The Law is not settled for the Tithe of Hops, whether it should be paid by the Pole, Pound, &c. *Siderf. 443.*

No Tithe shall be paid for Fish taken out of the Sea, or any River, unless it be by particular Custom, as in *Wales, Ireland, &c.* And if a Man keep Pheasants, &c. within Limits, by clipping their Wings, no Tithe shall be paid for their Eggs, or Young, not being reclaimed; but of young Pigeons in Pigeon Holes, &c. about a Man's House, Tithe shall be paid, if they are sold; but not if they are spent in the Family. *1 Roll. 636, 644. More 599.*

Tithe of all tame Fowl is to be paid either in their Eggs, or Young in their Kind, according to the Custom of the Parish; Geese, Ducks, and Swans are usually paid in kind, but of Hens and Turkeys, commonly in Eggs. A

## The Lawes concerning

A Tithe of Masse is due, but not for Acorns which fall and are eaten by Swine; all Hazels, Hollies, Maples, Birch, Alders, Thorns, and other Wood, are regularly to pay Tithes, being of any Age or Bigness whatsoever; and likewise Oak, Ash, Elm, &c. esteemed Timber cut under twenty Years growth, shall pay Tithe-Wood; but not if they are above 20 Years growth; nor for Loppings, &c. And if Underwood is cut for fencing of Grounds, Fewel to be spent in Houses, &c. in the same Parish, no Tithe shall be paid for it. *2 Inst. 643. Cro. Jac. 199. Cro. El. 499.*

If a Man convert his Land into a Nursery for Fruit-Trees, or other Trees, and sell them for Profit, to such as transplant them into other Parishes, he shall pay Tithes of them. *Roll. 1. 637.* But no Tithe shall be paid of Wood cut for Hop-poles to be used in the same Parish, where the Parson hath the Tithe of the Hops. And if Wood-lands  
are

are mixt with Woods, tithable and not tithable, and the greater part be such as are not tithable, it shall privilege the rest from Payment of Tithe. 19 Jac. B. R.

The Canonists hold that the tenth Toll-dish shall be paid as Tithe for Mills; but this does not agree with the Common Law, and is therefore not binding; but in some Places there is a Tithe-Rate paid for Mills, which is good by Custom. Tithes regularly are not due for Dwelling-houses, and yet a *Modus* may be due for a House, as well as for Land; but it shall be intended for the Land before the House was built; Tithes shall not be paid for Turf, Slat, Tiles, Stones; nor of Tin, Lead, Copper, &c. dug out of the Ground, unless it be by Custom. *Hob. 11. Moore 908. 2 Inst. 651.*

The Regulation of Payment of Tithes is for the most part governed by the Custom of the Place; and therefore if by Custom the tenth

## The Laws concerning

tenth part of Corn or Hay hath been measured forth, growing upon the Lands, this is to be observed; if for the Tithe of Hay the Parishoners have used to make it into Hay-cocks before they have set forth their Tithes, they are to do it still; but where there is no such Custom, they may set it forth in Grass-cocks; and if Tithe-Corn hath been paid time out of Mind, in Sheaves bound up, it must be in that manner continued. *Latch 125. Hob. 250.*

By 32 H. 8. c. 7. All Persons shall duly set forth, and pay their Tithes, according to the Custom of the Places where they grow due; and if the Tithes are not set out and paid, the Party grieved may convene those as detain them before the Ecclesiastical Judge, who has power to hear and determine the Matter in Question summarily, according to the Ecclesiastical Laws; and to adjudge Costs on an Appeal.

If

If any Person after such Sentence given, refuse to pay the Tithes or Sums of Money adjudged, then two Justices of Peace, upon Certificate thereof from the Judge, shall commit the Party so refusing to the next Gaol, there to remain until he have found Sureties by Recognizance to perform the said Sentence. But this Statute is not to extend to Lands discharged by Law, from the Payment of Tithes; nor to the City of *London*.

The 2 & 3 Ed. 6. c. 13. enacts, That none shall carry away any Corn before he hath justly divided and set forth the tenth part of the same, or otherwise agreed for the Tithes with the Parson, Vicar, &c. on pain to forfeit treble Value of the Tithes for such Corn. And the Owner claiming such Tithes, may depute his Servant, &c. to see the said Tithes be truly set out and severed from the nine Parts, and the same quietly to take and carry away.

Barren

## The Laws concerning

Barren Heath, and Waste-Grounds, which have hitherto paid no Tithes, by reason of Barrenness, improved and converted to arable Ground, or Meadow, shall at the end of seven Years, and not before, next after such Improvement, be liable to the Payment of Tithes; or if they yield some small Tithe before the Improvement, the Owners shall only pay the same small Tithe during the first seven Years, but afterwards pay the full Tithe, according to such Improvement.

Every Person exercising Merchandize, buying and selling, or any other Art or Faculty (being such Persons as have hitherto paid Personal Tithes, and not Day-Labourers) shall yearly at or before Easter, pay for his Personal Tithes the tenth part of his clear Gains, Charges deducted. And Offerings are to be paid, &c. as heretofore.

Suits

Suits for subtracting or withdrawing of Tithes, and other Profits Spiritual, are to be prosecuted in the Ecclesiastical Court before the Ecclesiastical Judge; who hath power to excommunicate the Party disobeying the Sentence, &c.

By 7 & 8 W. 3. c. 6. for the easie Recovery of small Tithes, under the Value of 40 s. the Person to whom such Tithes belong may at any time within two Years after the same are due, and twenty Days after Demand, complain to two Justices of the Peace disinterested, who have power to summon the Party to appear before them, &c. And after Appearance, or in Default thereof (proof being made of Service of the Summons) they may hear the Complaint, examine Witnesses, and pass Judgment by ordering the Offender to pay the Tithes, and Costs not exceeding 10 s.

If the Money so adjudg'd shall not be paid within ten Days after

No.

## The Laws concerning

Notice, the Constables, &c. by Warrant from the said Justices, may levy the same by Distress and Sale of the Offender's Goods, for the Use of the Complainant; but Appeal may be had to the next Sessions, whose Judgment shall be final.

No Judgment of Justices in Sessions, &c. may be removed by *Certiorari*, unless the Title of the Tithes be disputed, or the Party against whom the Complaint is made; insist on a *Modus*, and deliver the same under his Hand to the Justices; then on the Defendant's giving Security, to be allow'd by the Justices, to pay the Costs and Damages, which upon a Trial at Law may be given him, the Justices may not proceed; but the Complainant is put to his Remedy, by suing for his Tithes in the Courts at *Westminster*.

Where any Person shall make a false and vexatious Complaint for with-holding of small Tithes, two Justices may award Costs to the Party prosecuted, not exceeding 10 s.

By

By the 7 & 8 W. 3. c. 34. If a Quaker shall refuse to pay or compound for his great or small Tithes, under the Value of 10 l. two disinterested Justices residing nearest the Parish, may upon Complaint summon him to appear before them, and examine upon Oath the Truth of the Complaint, determine what is due to the Person complaining, and by Order under their Hands and Seals direct the Payment.

After such Order made for Payment, if the Quaker refuse to comply, one of the said Justices may by warrant under his Hand and Seal, order the same to be levied by Distress, &c. But the Quaker, if he apprehends himself aggrieved, may appeal to the next Quarter-Sessions; and in that Case no Warrant for Distress may be legally granted 'till the Appeal is determined. No Justices who puts these Acts in Execution must be Patron of the Church.

The 11 & 12 W. 2. enacts, That all Persons who shall sow or cause  
to

## The Law concerning

to be sown any Hemp or Flax, in *England or Wales, &c.* shall pay to every Parson, Vicar, or Improprator of the Parish or Place yearly, 5*s.* for every Acre sown, before the same be carried off the Ground, and so proportionably; for the Recovery of which, such Parson, &c. shall have the usual Remedy. But this Act shall not charge any Lands discharged by *Modus decimandi*, ancient Composition, or otherwise.

Real Compositions for Tithes are to be made by the concurrent Consent of the Parson, Patron and Ordinary; but when so done, by this Statute, such Composition shall not bind the Successor; by reason all Grants are restrained to 21 Years, or three Lives. 13 *Eliz. c.* 10.

Lands may be exempted from the Payment of Tithes, where Compositions have been made, which are usually enter'd in the Bishop's Register, and at first made for a valuable

able Consideration; so that though in process of time upon the increase of the Value of the Lands, such Compositions do not amount to the Value of the Tithes, yet Custom prevails, and from hence arises what we call a *Modus decimandi*. *Hob. 297.*

If a Parson sow his Ground, and then sell the Corn growing upon it, the Buyer of the Corn shall pay the Tithe of it to the Parson that sowed and sold the same. So if a Parson sow his Glebe-Land, and then lease it, the Tenant shall pay his Parson, Landlord, Tithe of the Corn. And some of our Books tell us that if a Parishioner sow his Lands, and before Severance the Parson die, in this case the Parson's Executors, and not his Successor, shall have the Tithes. *Dyer 43. Roll. 655. 40 El.*

By an ancient Statute the Citizens of *London* were order'd to pay yearly to their Parsons, &c. for every 10 s. Rent of all Houses, Shops,

## The Laws concerning

Shops, Warehouses, &c. 16 d.  $\frac{1}{2}$ , and for every 20 s. Rent 2 s. 9 d. and so ascending for every 10 s. Rent. But *Anno* 22 & 23. of *Charles* II. after the Fire of *London*, the Tithes of every Parish were reduc'd to a Certainty, from 200 l. per *Ann.* the greatest Incomes of Rectors, to 100 l. per *Annum* the lowest, over and above Perquisites, &c. to be levied by Rate and Assessment upon all Houses, &c.

Tithes may be demised by Deed in Writing, under Hand and Seal; but they cannot be granted by Copy of Court-Roll, because they are not Parcel of a Manor: Upon a Demise of Tithes for Years, a Rent may be reserved, because an Action of Debt will lie upon such Lease. *Style* 261.

*A Lease of a Parsonage,  
Tithes, &c.*

**T**HIS Indenture made, &c.  
Between *A. B.* of, &c. of  
the one Part; and *C. D.* of, &c.  
of the other Part; Witnesseeth,  
That the said *A. B.* for and in Con-  
sideration of the yearly Rent and  
Covenants hereinafter mentioned,  
on the part and behalf of the said  
*C. D.* to be paid and performed,  
Hath demised, granted, and to  
Farm-letten, and by these Presents  
doth Demise, &c. unto the said  
*C. D.* All that the Rectory or Par-  
sonage of, &c. with all and singu-  
lar Tithes, Tenths, Glebe-Lands,  
Houses, Profits, Commodities and  
Advantages whatsoever arising,  
growing or renewing from and out  
of the said Rectory or Parsonage,  
or to the said Rectory or Parsonage  
M belong-

belonging, or in any wise appertaining, or therewith formerly held and enjoyed, as Part, Parcel or Member thereof, with their and every of their Appurtenances, To have and to hold the said Rectory or Parsonage, Tithes, Tenths, Glebe-Lands, Rents and Profits, with their and every of their Appurtenances, unto the said C. D. his Executors, Administrators and Assigns, from, &c. for and during, and unto the full end and term of 21 Years, from thence next ensuing, and fully to be compleat and ended. Yielding and Paying therefore yearly, and every Year during the said Term, unto the said A. B. his Heirs and Assigns the yearly Rent, or Sum of, &c. at the two most usual Feasts, or Days of Payment in the Year, (that is to say) the Feast of, &c. and, &c. by even and equal Portions, the first Payment thereof to begin and to be made at the Feast of, &c. next ensuing the Date of these Presents.

And

And if it shall happen the said yearly Rent of, &c. to be behind and unpaid in part or in the whole, by the Space of 28 Days next after either of the said Feast Days, on which the same ought to be paid as aforesaid, being lawfully demanded, and not paid, and no sufficient Distress or Distresses in or upon the said Premises may or can be found, whereby the same may be levied, that then and from thenceforth it shall and may be lawful to and for the said *A. B.* his Heirs and Assigns into the before demised Premises, and into every Part and Parcel thereof, with the Appurtenances, to re-enter, and the same to have again repossess and enjoy as in his or their former Right and Estate, and the said *C. D.* his Executors, Administrators and Assigns, and every of them from and out of the same, from thenceforth utterly to expel, amove and put out, any thing herein contain-

## The Laws concerning

ed to the contrary thereof, in any wise notwithstanding. And the said *C. D.* for himself, his Executors, Administrators and Assigns doth covenant, promise and grant to and with the said *A. B.* his Heirs and Assigns by these Presents that he the said *C. D.* his Executors, Administrators or Assigns shall and will from time to time, and at all times during the said Term of 21 Years hereby granted, well and truly pay, or cause to be paid unto the said *A. B.* his Heirs and Assigns the yearly Rent, or Sum of, &c. herein before reserved, at the Days and times before limited and appointed for the Payment thereof, according to the true intent and meaning of these Presents. And the said *A. B.* for himself, his Heirs and Assigns doth covenant, promise and grant to and with the said *C. D.* his Executors, Administrators, and Assigns by these Presents, That he the said *A. B.* his Heirs and

and Assigns shall and will from time to time, and at all times during the said Term hereby granted, pay, bear and discharge, or deduct and allow unto the said C. D. his Executors, Administrators or Assigns, out of the Rent herein before reserved, All and all manner of Duties, Payments and Taxations whatsoever, as well Ordinary as Extraordinary, which by reason of any Act of Parliament, or otherwise howsoever, shall be legally issuing, charged or payable out of or in respect of the said Premises, or any part thereof. And also that it shall and may be lawful to and for the said C. D. his Executors, Administrators and Assigns, (for and under the Rent and Covenants herein reserved and contained) peaceably and quietly to have, hold, use, occupy, possess and enjoy the said Rectory or Parsonage, Tithes and all other the Premises hereby demised, and every Part and Parcel there-

## The Laws relating to

of, with the Appurtenances, for and during the said Term of 21 Years hereby granted, without the lawful Let, Trouble, Interruption, Hindrance or Denial of the said *A. B.* his Heirs or Assigns, or of any other Person or Persons whatsoever, lawfully claiming, or to claim by from or under him, them, or any of them. In Witness, &c.

*The*

## *The Laws relating to Ejectment of Tenants, &c.*

**T**HE Law of Ejectments (as it was first settled) chiefly relates to the Possession of Tenants; and the Preservation and Securing of their Terms.

Ejectment, which the Law calls *Ejectio Firme*, is an Action where one Grants a Lease to another of Houses, Lands, &c. for Term of Years, and a third Person makes an Entry and ousts the Lessee, whereupon he recovers his Term and Damages: This was the Use of this Action in former Times, when it was not thought to concern the Lessor, but was only the proper Interest of the Lessee; but of late

## The Laws relating to

Times it is put in Practice as the Suit of the Lessor, and the Lease is made only to try his Title, and to recover the Possession to him. 2 Cro. 150. Plow. 78.

The Action of *Ejectione Firme* was never known to remove a Possession 'till the Reign of King Henry the VIIth. And the Lord Chancellor *Ellesmere* then blamed it, and preferred an Action of Trespass *Quare clausum fregit*, as much better to try the Title than an *Ejectione Firme*. But in common Action of Trespass, Damages are only to be recovered, whereas in *Ejectione Firme* the Thing or Term it self is to be recovered as well as Damages. 3 Leon. 49.

In antient Times the Ejector in Law was any Person that came upon any Part of the Land, &c. mentioned in the Lease of Ejectment, though he were there by Chance, and without any Intent to disturb the Lessee of the Possession, after the Sealing of the Ejectment.

**Ejectment of Tenants.** T  
ment-Lease; and such an Ejector  
was a good Ejector against whom  
an Action of *Ejectione Firme* might  
be brought, to try the Title of  
Land in Question.

But now the Law is altered, for  
there is no Occasion for a Lease to  
be made and sealed upon the Pre-  
mises to the Lessee, who has a  
Mind to try the Title, and to leave  
the Lessee in Possession to be ousted  
and ejected by the Tenants in Pos-  
session, &c. The usual Course now  
is, to draw a Declaration, and  
therein to feign a Lease to him  
that would try the Title, and also  
feign a casual Ejector or Defendant  
in the Declaration, and then deli-  
ver the Declaration to the Ejector,  
who sends or delivers a Copy of  
it to the Tenant in Possession, or  
his Wife, and gives Notice to him  
at the Bottom in Writing, to ap-  
pear and defend his Title; or, that  
he will suffer Judgment by Default,  
whereby he (the Tenant) will be  
turned out of Possession.

To this Declaration the Tenant may appear by Attorney, and consent to a Rule to be made Defendant in the Place of the casual Ejector, and to confess a Lease, Entry and Ouster, and at the Trial to stand upon the Title only. If the Tenant in Possession doth not appear and enter into the above-mentioned Rule, in due Time after Service of the Declaration, then upon Affidavit made, That the same was left at his House, or served upon him, with Notice to appear as aforesaid, the Court upon Motion will order, That Judgment be enter'd against the casual Ejector (or feign'd Defendant) and the Tenant will be turn'd out of Possession. And if the Tenant doth appear, and doth not consent upon Motion to the Rule, the Court will order that he shall consent, or else Judgment shall be entred *ut supra*, and he shall be ousted.

No

No Arrest is to be made in this Action: And if there be no Tenant in Possession, the old Way of Sealing a Lease upon the Premises is to be observed. The feign'd Lease is laid sometimes for three Years, and sometimes for five, or seven Years.

Upon Trial of Ejectment, the Plaintiff must set forth his Title under the last Person seised in Fee of the Premises, and prove the Execution of the Deeds. Upon a Possession in Law, a Man shall never maintain an *Ejectione Firme*, but he ought to have actual Possession at the Time of the Ouster; as if Tenant for Years make a Lease at Will, and the Tenant at Will is ejected, the Lessee for Years shall not have *Ejectione Firme*. 1 Roll. Rep. 3.

If it appear by the Record of a Special Verdict, that the Plaintiff had Priority of Possession, and no Title be prov'd for the Defendant, the Plaintiff shall have Judgment.

## The Laws relating to

ment. 2 *Saund.* 112. But if the Plaintiff hath not Title according to his Declaration he cannot recover, whether the Defendant hath Title or not, and whether he be a Disseisor or not; as where an Infant makes a Lease at Will, and enters and ousts the Plaintiff, and the Plaintiff brings Ejectment. 1 *Leon.* 211.

Ejectment may be brought in the Court of King's Bench, or Common Pleas; and where the King's Revenue is concern'd it is to be commenc'd in the Exchequer. It ought to be tried in the County where the Land lies: If *Ejectione Firme* be laid in the County of D. for Lands or Tenements lying in another County, altho' it be tried by Assent of the Parties, and the Defendant pleads Not guilty, and Verdict and Judgment be given for the Plaintiff, yet this is Error; for it is against the Law which cannot be altered by Assent of Parties: But if upon View of the Record,  
it

it doth not appear to the Court, That the Land lies in another County, the Judgment will not be reversed. Bishop Landaff's Case.

But in some of our Books it is held, That a Trial by Consent upon the Roll in other County than where the Land lies, is good in Ejectment. 1 Roll. 787. 2 Keb. 260. Jones Rep. 199. Devoren and Walcot's Case.

Ejectment lies not *de uno Domo*, because it may be a Dove-House, or Dwelling-House; but it lies *de domo vocat'* A. &c. It lies not of the Moiety of a Tenement; nor can it be of a Manor, for that there cannot be an Ejectment of the Services; but if a Quantity of Acres be express'd, it is sufficient; and it lies of a Manor, or the Moiety of a Manor, if the Attornment of Tenants can be proved. 2 Roll. 487. 2 Bulst. 28. Hetley, 80.

The Law relating to

*Ejectione Firme* lies for a Room of a House; a Stable; for a Cottage; a Mill; Piece of Land, containing so many Acres; a Croft; a Cole-mine; a Saltwork; Herbage; a Rectory or Chapel, and Tithes thereunto belonging; but it does not lie of a Rent, Common, Right of Fishing, free Warren, &c. It lies for such Things whereof one may be ejected, and restored to the Possession of; and not otherwise. 3 Cro. 492. 11 Rep. 25.

*Ejectment de septem Messuagiis sive Tenementis*, is ill for the Uncertainty. Cro. Eliz. 146. But *Ejectment de uno Messuagio sive Tenemento vocat.* the Black Swan, is good; for the last Words ascertain it. Siderf. 295. *Ejectione Firme de quatuor Molendinis*, without expressing whether they are Wind-mills or Water-mills, is good. Mod. Rep. 9. *Ejectment de uno Clauso*, without saying how many Acres, is ill: And if it be *de uno Clauso*

*Clauso continen' tres acras per Estimationem*, it is ill. Ejectment of all Tithes is not good; nor *de virgat' terræ*, because these are uncertain in every County. *Keb. 450.*

The Certainty of the Land must be described, and the Qualities, &c. as the Number of Acres, and whether Land, Meadow, or Pasture. *11 Rep. 55.* But the Ejectment of a Messuage includes a Garden. *3 Keb. 44.*

He that desires to be made Defendant in Ejectment for as much Land, &c. as is in his Possession, or of his Under-tenant, must give a Note to the Attorney of the Plaintiff in Writing of what the Particulars are, of which he is possessed, or his Under-tenant, to prevent Delay at the Assizes. *Trim. 15 Car. 2.*

In Ejectment after Declaration, and before Plea, he which had the Title moved the Court to alter the Plaintiff, because he was to give Evidence; and the Court agreed to

# The Laws relating to

to it, on Payment of Costs, and giving Security for new Costs; and they may alter the Plaintiff in this Action, upon the same Reason that they may alter the Defendant, which is usually done. *1 Siderf.*

24.

The Plaintiff must declare on one Title; and in the Common Pleas if one move, That the Title of the Land do belong to him, and that the Plaintiff hath made an Ejector of his own, and therefore prays, That giving Security to the Ejector to save him harmless, he may defend the Title, the Court will grant it, but will not compel the Plaintiff to confess Lease, Entry and Ouster, except he will be Ejector himself: But it is not so in the Court of King's Bench, for there in both Cases, they will compel him to confess Lease, Entry, and Ouster. *Style's Rep. 368.*

The Defendant was by Rule of Court at the Trial, which was at the Bar, to appear and confess Lease,

Lease, Entry and Ouster, and to stand upon the Title only, and at the Trial he would not appear; upon which the Plaintiff was nonsuited, and yet the Judgment was for the Plaintiff upon the Rule. *Style 425.*

In *Ejectione Firme*, if a Rule be given to the Defendant to answer, and he doth not; and upon this another Rule is given to answer peremptorily, and he fails to do it, no Judgment shall be entred against him on a *Nihil dicit*, but upon Motion in Court. After Judgment for a Mortgagee in Ejectment, a Court of Equity cannot relieve the Mortgagor; but he ought to prefer his Bill before Judgment. *3 Bulst. 118.*

In inferior Courts in the Country they cannot make Rules to confess Lease, Entry and Ouster, as in the Courts at *Westminster*, but they must actually seal the Lease as at Common Law. *Mayor of Bristol's Case.* And where it was moved, That

That the Defendant, who by *Habeas Corpus* had removed an Ejectment out of the Sheriff's Court, might consent to a Rule of Court, that he should confess Lease, Entry and Ouster; the Court refused, the Defendant not being bound by the Rule below; because they cannot proceed by Way of delivering Declarations to the Tenants in Possession, but as at Common Law by actual Lease seal'd. *B. R. Mich. 16. Car. 2.*

One seised of Lands in Fee-simple becomes Bail in an Action of Debt in *B. R.* and after Issue join'd, lets the Land to the Plaintiff; Judgment is afterwards given against the Principal, and an Extent taken upon the said leased Lands; the Plaintiff being thereupon ousted, brings his Action of *Ejectione Firme*. *Cro. Jac. 449.* Ejectment also lies against Tenant by *Elegit* holding over, after he is satisfied at the extended Value. *1. Keb. 891.*

Tenant

Tenant for Life, Remainder to his Issue in Tail; the Tenant for Life enters into a Statute and dies; the Conusee sues a *Scire Facias* against the Heir, who was Issue in Tail, and the Sheriff returns *Scire Feci*; and upon this Execution was had without Plea pleaded by the Heir, and the Heir being ousted by the Execution, brought *Ejectione Firme. Per Cur'*, The Heir shall be bound by this Execution, and he has no Remedy by Ejectment, or otherways, unless the Sheriff have made a false Return of the *Scire Facias*, and then he may have Remedy against the Sheriff. *Siderf. 55.*

If a Man recover in *Ejectione Firme* against *A. B.* who after dies, he must sue Execution against his Heir; for by Intendment *A. B.* his Ancestor the Ejector, was a Disseisor. *1 Roll. Abr. 887.*

In Ejectment against two, one confesseth, the other pleads Not guilty, and at the Trial the Plaintiff is nonsuited; Execution may  
not

## The Laws relating to

not in this Case be taken against him that confesseth ; but if by Rule of Court one be made Defendant for Part, and confess, the Plaintiff, notwithstanding the Nonsuit, may take Judgment against him that confesseth for his Part: Tho' if each Defendant take upon him the whole Title, the Plaintiff in any Case cannot have Execution. 1 Keb. 786.

In *Ejectione Firme* against Drake, and five others. Drake pleads Not guilty ; the others plead ; the Plaintiff replies ; and so a Demur. *Per Cur'*. As one Issue in this Action was to be tried between the Plaintiff and Drake, altho' the Plaintiff offered to release his Damages on the Issue join'd, and to have Judgment against the five Defendants who had demurred, yet the Court determined, That no Judgment should be given upon the said Demurrer, 'till the Issue was tried. For this Action being *Ejectione Firme*, the Possession of the Land is  
to

to be recovered; and it may be, That *Drake*, who has pleaded the general Issue, has Title to the Land. But if this Action had been an Action of Trespass, in such Case, upon Release of Damages, and on the Issue join'd, the Plaintiff shall have Judgment presently. 2 *Leon.* 199.

A new Trial was denied in Ejectment, tho' the Verdict was given contrary to the Direction of the Court in Matter of Law, because it was a Trial. *Jones Rep.* 224.

If a Deed be pleaded at a Trial, the Party must shew it in Court; so if a Record be pleaded, it must be *sub pede sigilli*; but in Evidence it is not absolutely necessary to shew either, if it can otherwise be prov'd to a Jury. In Evidence for Lands in Ejectment in ancient Demesne, the Court admitted of Evidence to prove a Record to cut off the Intail, which was lost: And it may be proved to a Jury by Testimony; as the Decree made in the  
Reign

Reign of King *Henry* the VIIIth, for Tithes in *London*, is long since lost, yet it hath been often allow'd there was one. 1 *Vent.* 257. Witnesses may prove the Contents of a Deed or Will, and so the Jury may find them, the Deed or Will not being found *in hac verba*. *Style* 34. And an ancient Deed is good Evidence without proving, or Seal to it. *P.* 17 *Car.* 2. *Wright's Case*. The Copy of a Recovery was suffered to be given in Evidence, the Recovery it self being burnt. *Mod. Rep.* 117. And a Copy of the Counterpart of a Lease, the Lease being lost, was allowed to be Evidence.

But in Ejectment, and all other Actions, it has been thought dangerous to permit any upon the general Issue to give in Evidence, That there is such a Deed which they have heard or read, or to prove it by a Copy: Tho' in Cases of Extremity, as where Deeds are burnt by Fire; upon the general Issue,

Issue, the Judges will permit a Deed to be prov'd to a Jury by Testimony. 10 Rep.

In Ejection the Defendant that made Title as a Purchaser under a Devisee, shewed only a Bill in Chancery preferr'd by the Heir, under whom the Lessor of the Plaintiff claim'd against the Devisee, whereby the Will was set forth and confessed in the Answer. But it was adjudg'd no Evidence, tho' a Possession was proved in the Devisee, and that this had been confessed by the Plaintiff in a former Trial. 2 Keb. 35. And yet in 1 Ventr. 66. there is mention of a Case, wherein a Bill in Chancery was said to be given in Evidence against the Complainant.

If Judgment be given in *Ejectione Firme*, by Default, *Non sum informatus*, &c. for the Plaintiff to recover the Term, but it is awarded that there shall be a Writ of Inquiry of Damages, without saying, *Quod capiatur*, this has been held

held erroneous; for it may be he will never inquire of the Damages, and make Return of it; and then the Fine due upon the *Capiatur* will be lost. 1 *Roll. Abr.* 769.

On Not guilty pleaded, Issue is join'd, and a special Verdict found; and upon this Verdict, Judgment given against the Plaintiff, and after the Plaintiff brings a Writ of Error, whereupon the Judgment is reversed; the Plaintiff shall have Judgment to recover his Term, his Declaration being good, and the Law being for him, on the special Verdict: For the Court, which reverseth the first Judgment, ought to give the same Judgment which was given in the first Suit. 1 *Roll. Abr.* 774.

Verdict for the Plaintiff was given in Ejectment; but upon Agreement made between the Plaintiff and Defendant, the Defendant was to hold the Land recovered, for the Remainder of his Term to come, and according to this Agreement

ment he held it for two Years; but afterwards before his Term expired, the Plaintiff took out an *Habere facias possessionem*, and executed it. It was moved, That the Defendant might have a Rule for Restitution. *Per Cur.* It cannot be allow'd: But he might have his Action on the Case against the Plaintiff for not performing his Agreement. *Style 408.*

The Writ *Habere facias possessionem*, is a Writ directed to the Sheriff to give Possession of a Term of Years recovered in the King's Court by Ejectment, &c. It is made out by the Clerk of the Judgments, after Costs taxed, and the Judgment signed. After *Habere facias possessionem* executed, if the Party be turned out again by the Defendant's Means, on Motion in Court he may have a new *Habere facias possessionem*, and an Attachment against him: But if after quiet Possession others enter, he must have a new Action or Restitution; other-

N

wise

wise by Practice the Plaintiff might turn out any of his after Lessees, on Non-payment of Rent. 1 Keb. 779.

If *Habere facias possessionem* go to the Sheriff, and he returns Execution of it, whereupon the Writ is filed; there the Court may not award a new *Habere facias possessionem*, but before they may; and in the first Case it appears the Party had Execution. In *Underhill's Case* the Counsel pray'd, That the Defendant might file an *Habere facias possessionem*, to the Intent that no new one might be taken out, or that what was taken out should not be filed after the Return of it, which the Court refused; for the Party hath Election to return it or not, and may renew it at Pleasure, 'till an effectual Execution be had. 2 Keb. 245.

In *Style's Case*, on a Judgment in *Ejectione Firme*, he was put into Possession by the Sheriff, by *Habere facias possessionem*; and after the Defendant

tendant enters again, and the Writ was returned, but not filed. *Per Cur.* He may not have a new Writ of Execution, but is put to his new Action, and the filing of the Writ is not material, it being in the Election of the Sheriff if he will return it or not. But if Execution had not been fully made, as in case of Persons hiding themselves in the House, and after the Sheriff is gone, they oust those that are in Possession; in this Case a new Writ shall be awarded. 2 *Brownl.* 216.

If a Sheriff give Seisin but of Part, a new *Habere facias possessionem* may be had for the rest. Upon the *Habere facias possessionem* the Sheriff may break open the House to deliver Possession. 5 *Rep.* 91. The Sheriff in Cases where a House is recovered, is to put the Party in Possession by entring and delivering him the Key, &c. of Land by a Twig, Clod, &c. and of Rent by Corn or Grass growing on the  
N 2 Land,

# The Laws relating to

Land, out of which the Rent issues.  
6 Rep. 52.

Rent is granted with a Proviso, That if it be Arrear, the Grantee may enter and retain until he be satisfied. This Proviso shall enure to grant a certain Estate to the Grantee, when he enters for Non-payment. And tho' the Grantee by such Entry cannot grant a Freehold, yet he hath such an Interest as he may make a Lease of it; and his Lessee may have Ejectment; for the Law does not give an Interest to any, but it also gives a Remedy for it; and if he have Remedy to hold such Possession, he ought to have his Action, which is the lowest Degree of gaining Possession. 1 Keb. 287.

*The*

## The Original in Ejectione Firmæ.

**R**EX, &c. Vic' South'ton salutem  
Si A. B. fecerit te securum tunc  
pone per vad' & salvos pleg. C. D.  
nuper de, &c. Gener' Ita quod sit  
coram Justiciariis nostr' apud Westm'  
(tali die) ad respondend'. E. F. de  
pl'ito quare Vi & Armis unum Messu-  
ag' quinque acras prati & quinq; acras  
pastur' cum pertinen' in, &c. in Co-  
mit' tuo quæ, &c. Dimisit ad termi-  
num qui nondum præterit Intravit &  
ipsum a Firma sua Ejecit & alia  
enormia ei intulit ad grave damnum  
ipsius E. & contra pacem nostram &  
Dom' Regis nunc, &c.

## A Declaration in Ejectment, in the King's Bench.

Mich. 5<sup>o</sup> Georgii Regis.

South'ton ff. **J**ohannes B. queritur  
de Georgio D. in  
Custod' Mar', &c. videl't quod cum  
quidem Thomas E. Gen' Decimo die  
Octobr' Anno Domini Mill'imo Sep-  
tingentesimo Octodecimo apud Paroch'  
Sci J. in Com' præd' Dimisisset con-  
cessisset & ad firmam tradidisset præ-  
fat' Johanni Un' Messuag' quinque  
acras prati & quinque acras pastur'  
cum pertin' Situat' jacen' & existen'  
in Paroch' de, &c. præd' in Com' præd'  
Habend' & Tenend' Tenementa præd'  
cum pertin' præfat' Johanni & Assign'  
suis a vicesimo nono die Septembris  
tunc ultimo præterit' usque plenu' finem  
& terminu' quinque Annor' extunc  
prox' sequen' & plenar' complend' &  
finiend'

finiend' Virtute cujus quidem Dimissi-  
on' idem Johannes in Tenementa præd'  
cum pertin' Intravit & fuit inde pos-  
sessionat' quousq; præd' Georgius postea  
scilicet eodem decimo die Octobr' Anno  
supradict' Vi & Armis, &c. in tene-  
menta præd' cum pertin' in & super  
possession' ipfius Johannis inde Intra-  
vit & ipm' Johannem a firma sua præd'  
termino suo præd' inde nondum finit  
Ejecit expulit & amovit ipsumq; Jo-  
hannem a possessione sua præd' inde ex-  
tratenuit & adhuc extratenet & al'  
enormia ei adhuc & ibidem intulit  
contra pacem dict' Domini Regis nunc  
& ad dampnu' ipsius Johannis Decem  
Librar' Et inde produc' sectam, &c.

Jacob pro Quer' } Pleg' &c.  
Goddard pro Def. }

Write at the Foot of the Declara-  
tion on the Left Hand Side, to  
the Tenant in Possession :

Mr. T. M.

**Y**OU may perceive by this Declaration, that I am sued as a casual Ejector for the Mesuage and Lands herein contain'd, whereto I have no Title. If therefore you claim any Title to the same, or any Part thereof, you must appear the next *Hillary-Term*, in his Majesty's Court of King's Bench at *Westminster*, by some Attorney of that Court, and make your Defence, otherwise Judgment will be had against me by Default, whereby you'll be turned out of Possession.

I am,

Your Loving Friend,

George D.

Affida-

**Affidavit of Service of a  
Declaration in Ejectment.**

*In Banco Regis.*

*Int' Johannem B. Quer'.*

*&  
Georgium D. Def.*

*A. B.* of *Ec.* maketh Oath,  
That he this Deponent  
did on *Ec.* last past, deliver to  
*T. M.* Tenant in Possession of Part  
of the Premisses in Question, a  
true Copy of the Declaration in  
Ejectment, hereunto annexed :  
And also, That he this Deponent  
did, on the same Day, deliver to  
*M.* the Wife of *Ec.* Tenant in  
Possession of the Residue of the  
Premisses in Question, another  
true Copy of the Declaration in  
Ejectment hereto annexed. At  
the Foot of which Declarations

**The Laws relating to, &c.**

are Notices for the said T. M.  
and, &c. to appear the then  
next, and now present *Hillary-*  
*Term*, in this Court, and defend  
their Title, otherwise Judgment  
would be entred against them by  
Default. And this Deponent  
further saith, That he told the  
said T. M. and M. the Wife of  
the said, &c. severally, That if  
the said T. M. and the Husband  
of the said M. did not appear  
and defend their Title the then  
next, and now present *Hillary-*  
*Term*, they would be turn'd out  
of Possession.



A. B.

*Rentals*

# Rentals of Estates, Accounts of Rents, &c.

## Rental of a Manor.

*A Rental of the Manor of A. in the County of B. belonging to the Honourable E. D. Esq; for one Year, beginning Ladyday, 1719. and ending at Ladyday, 1720.*

		<i>l.</i>	<i>s.</i>	<i>d.</i>
<b>A.</b>	<b>B. For one Messuage } called, &amp;c.</b>	<b>1</b>	<b>0</b>	<b>0</b>
<b>C. D.</b>	<b>For one Tenement in the } Possession of, &amp;c.</b>	<b>0</b>	<b>15</b>	<b>0</b>
<b>E. F.</b>	<b>For certain Lands called } by the Name of, &amp;c.</b>	<b>0</b>	<b>10</b>	<b>0</b>
<b>G. H.</b>	<b>For one Cottage and } Yard-Land.</b>	<b>0</b>	<b>7</b>	<b>6</b>

l. s. d.

J. K. For one Piece of Meadow, } 0 5 0  
 &c. }

L. M. For, &c. 0 3 6

N. O. &c.

Examined by me G. J.  
 Steward of the said  
 Manor.

*A Warrant of Attorney to a Bailiff  
 of a Manor to receive Rents, &c.*

**K** Now all Men by these Presents, That I  
 E. D. of, &c. Esq; Lord of the Ma-  
 nor of, &c. Have, made, ordained, de-  
 puted and appointed T. G. of, &c. my  
 Bailiff or Agent for me, and in my Name,  
 and to my Use, to collect and gather, and  
 to ask, require, demand and receive of all  
 and every my Tenants that have held,  
 enjoyed, or which now do, or hereafter  
 shall hold or enjoy any Messuages, Lands  
 or Tenements from, by or under me, with-  
 in my said Manor of, &c. All Rents and  
 Arrears of Rent, Heriots, and other Pro-  
 fits that now are, or shall hereafter become  
 pay-

payable, due, owing or belonging to me within the said Manor; and in Default of Payment thereof to distrain for the same from time to time; and such Distresses to impound, detain and keep until Payment be made of the said Rents, and the Arrears thereof. And I do also further empower and authorize the said T. G. to take Care of, and inspect into all and every my Messuages, Lands and Woods within the said Manor, and to take an Account of all Defects, Decays, Wastes, Spoils and Trespases, committed or permitted within my said Manor, or any Messuages, Lands or Woods belonging to the same. And further, To act and do all other Things, that to the Office of a Bailiff of the said Manor appertains; as a Reward for which I hereby promise to pay, or allow him 10<sup>l</sup>. a Year, &c. In Witness, &c.

*Accounts*

*Accounts of Rent of Estates.*

	l.	s.	d.
<b>A. B. Debtor, One Year's Rent</b>			
<b>. for the Farm and Lands</b>			
<b>called, &amp;c. due Ladyday,</b>	150	0	0
<b>1720.</b>			

	l.	s.	d.
<b>A. B. Creditor,</b>			
<b>One Bill of</b>			
<b>Disbursements</b>			
<b>for Repairs,</b>	20	0	0
<b>&amp;c. allowed</b>			
<b>by the Ste-</b>			
<b>ward.</b>	150	0	0

<b>A second Bill for</b>			
<b>Taxes the a-</b>	15	0	0
<b>forefaid Year.</b>			
<b>In Money.</b>	115	0	0

<b>G. D. Debtor for one Year's</b>			
<b>Rent for a Tenement cal-</b>	80	0	0
<b>led, &amp;c.</b>			

G. D.

	l.	s.	d.
C. D. Creditor, By a			
Bill of Disburse-			
ments for Taxes,	20	0	0
Reparations, &c.			
Paid in Money.	60	0	0
		80	0

*An Acquittance for Rent.*

RECEIV'D this second Day of  
 April, Anno Dom. 1720.  
 of C. D. in Money the Sum of  
 sixty Pounds, which with a Bill  
 of Disbursements for Taxes, Re-  
 pairs, &c. amounting to twenty  
 Pounds allow'd on passing his  
 Accounts, amount in the whole  
 to the Sum of eighty Pounds;  
 and is in full of one Year's Rent,  
 for a Farm called, &c. to me  
 due at Ladyday last; I say re-  
 ceiv'd,

Per me W. B.

## Survey of a Manor.

*A Survey of the Manor of A. in the County of B. belonging to W. B. Esq; taken this third Day of April, 1720.*

Value per Ann.

l. s. d.

**A**. B. holds for his Life, and  
the Life of T. B. and  
C. B. his Sons, one Messuage,  
and twenty Acres of Land,  
Meadow and Pasture, &c. } 20 0 0  
within the said Manor, un-  
der the yearly Rent of 20 s.  
and 3 l. for a Heriot.

C. D. of, &c. holds by Copy  
for his own Life, and the  
Lives of M. his Wife, and  
A. his Son (all Living) one  
Messuage or Tenement, with  
the Appurtenances within  
the said Manor, called, &c. } 30 0 0  
Quit-Rent 30 s. Herriot 5 l.

E. F.

*l. s. d.*

E. F. holds by Lease for the  
Lives of K. his Wife, and  
T. his Son, one Tenement, } 20 0 0  
&c. within the said Manor,  
Rent 10 s. Heriot, &c. }

G. H. of, &c. holds for the  
Term of his own Life, one  
Cottage, with the Appurte- } 10 0 0  
nances, &c. Quit-Rent 5 s.  
Heriot 40. }

J. K. holds for her Widow-  
hood a Piece or Parcel of } 05 0 0  
Land, called, &c. Rent 2 s.  
6 d. Heriot 20 s. }

L. M. holds, &c.

Examined by me G. J. Gent.  
Steward.

# A Warrant to levy Amerciaments in the Lord's Court.

Maner' de A. *Estreats of Amerciaments in a  
Court-Baron, held for the said Ma-  
nor the third Day of April, 1720.*

OF A B. for not repairing  
of his House called, &c. } l. s. d.  
pursuant to an Order of the } o 13 4  
last Court }

Of C. D. for not scouring of  
the Ditches between his } o 10 o  
Ground called, &c. and, &c. }

Of E. F. for making an En-  
croachment on the Lord's } o 6 8  
Common. }

Of G. H. a Copyhold Tenant,  
for refusing to appear at this  
Court, being legally summon- } o 1 o  
ed (or G. H. J. K. L. M. &c. }  
each ) }

J. K. & c.

You

You are hereby authorized and required to levy of all and every the Persons above named, by Distress of their Goods, the several Sums of Money above-mention'd; and when levied that you answer the same to me, on the Day, &c. next ensuing the Date hereof. Given under my Hand, &c. this 4th Day of April, Anno Dom, 1720.

G. J. Sen. Ibid.

To T. G. Bailiff of  
the said Manor.

The

# A Warrant to levy Amerciaments in the Lord's Court.

Maner' de A. *Estreats of Amerciaments in a  
Court-Baron, held for the said Ma-  
nor the third Day of April, 1720.*

l. s. d.

OF A. B. for not repairing  
of his House called, &c.  
pursuant to an Order of the  
last Court } o 13 4

Of C. D. for not scouring of  
the Ditches between his  
Ground called, &c. and, &c. } o 10 0

Of E. F. for making an En-  
croachment on the Lord's  
Common. } o 6 8

Of G. H. a Copyhold Tenant,  
for refusing to appear at this  
Court, being legally summon-  
ed (or G. H. J. K. L. M. &c.  
each ) } o 1 0

J. K. &c.

You

You are hereby authorized and required to levy of all and every the Persons above named, by Distress of their Goods, the several Sums of Money above-mention'd; and when levied that you answer the same to me, on the Day, &c. next ensuing the Date hereof. Given under my Hand, &c. this 4th Day of April, Anno Dom, 1720.

G. J. Sen. Ibid.

To T. G. Bailiff of  
the said Manor.

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